

Twenty-Eighth Session
Council session, part III
Kingston
30 October – 8 November 2023

Draft regulations on exploitation of mineral resources in the Area

The Chair's further revised draft text on Part VII, Appendix IV and draft Standard and Guidelines

Prepared by the Chair, Olav Myklebust (Norway), of the Open-ended Working Group of the Council on the financial terms of a contract under article 13, paragraph 1 of Annex III to the United Nations Convention on the Law of the Sea and under section 8 of the Annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (OEWG)

Explanatory note

1. I have prepared this third revised text (“the Chair’s third revised text”) in the enclosure to assist the discussions in the OEWG.
2. During the meetings of the OEWG in July 2023, participants discussed and provided input to the Chair’s revised text of June 2023 ([ISBA/28/C/OEWG/CRP.4](#)). Subsequently, written proposals were submitted. Based on those, I have prepared this text. The structure and approach to the revisions are similar to the previous versions of the text, and I refer to the Chair’s revised text in respect of the working modalities ([Chair’s Text of 13 June 2022](#)).
3. The content of this text is without prejudice to the position of any participants on any of the matters referred to therein and does not preclude the consideration of matters not included in the document.

Enclosure I
Part VII
Financial terms of an exploitation contract

Section 1 General

Regulation 62
Equality of treatment

The Council [shall, based on the recommendations of the Commission, apply the provisions of this Part ~~in~~ on a transparent, uniform and non-discriminatory basis manner, and] shall ensure equality of financial treatment and comparable financial obligations for Contractors [to counter any disparity arising out of any grossly incomparable concentration of given resources].

Explanation / Comment

- Participants at the July meeting supported inclusion of the word “transparent”. Those participants also proposed to change “manner” to “basis”. I propose to change “manner” to “basis”, to be consistent with other provisions (i.e. Regulation 63).
- One participant proposes adding “to counter any disparity arising out of any grossly incomparable concentration of given mineral resources”. I invite comments.
- One participant proposes deleting, “shall be applied in a uniform and non-discriminatory manner” as it may create a negative inference for sections where these words are not included. It recommends adding “transparency” to Regulation 1. I invite comments.

Regulation 63
Incentives

1. The Council may, taking into account the recommendations of the Commission [and the Economic Planning Commission], [in accordance with the Standards and taking into account the Guidelines,] provide for incentives to Contractors, including financial incentives, [as well as regulatory and technical advice] on a transparent, uniform and non-discriminatory basis, [to further] [limited to] the objectives set out in article 13 (1) of annex III to the Convention. [Incentives introduced by the Authority shall, where appropriate, incentivize also Contractors to go beyond their existing contractual obligations and good industry practice, in particular in the context of environmental performances, and fully reflect any impacts on ecosystem services and the natural capital.]

2. [Furthermore,] the Council may provide incentives, [including financial incentives,] to [those Contractors entering into] [Contractors to undertake] joint arrangements with the Enterprise under article 11 of annex III to the Convention, and developing including to developing States or their nationals, to stimulate the transfer of technology thereto and to train the personnel of the Authority and of developing States.

3. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.

[4. Any incentives shall be fully compatible with the policies and principles under Regulation 2].

ALT

1. In accordance with the Standards and Guidelines and considering the recommendations of the Commission, the Council may offer incentives, as well as regulatory and technical advice to all

Contractors, transparently, uniformly, without discrimination or arbitrariness, to advance the goals outlined in article 13 (1) of Annex III to the Convention.

2. Furthermore, the Council may provide advice and support to Contractors entering into joint arrangements with the Enterprise as stipulated in article 11 of annex III to the Convention. The primary purpose of these incentives is to promote technology transfers and to support the training of personnel from both the Authority and developing States.
3. The provision of these incentives should not create an artificial competitive advantage for any of the companies holding exploitation contracts.
4. The Council will ensure that the incentives granted to Contractors, as per paragraphs 1 and 2, do not result in an explicit or implicit subsidy, giving them an unfair competitive leverage over land-based miners.

Chair's Proposed text

1. Pursuant to Article 11 of Annex III to the Convention, the Council may provide financial incentives to Contractors to undertake joint arrangements with the Enterprise, as provided for in Article 13 of Annex III to the Convention.
2. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.
3. Any incentives shall be fully compatible with the policies and principles under Regulation 2.

Explanation / Comment

- There are now three options to consider for this regulation. The first option includes 4 paragraphs incorporating the text mark-up to date. The second option is a 4 paragraph proposal from a participant. The third option is a Chair's proposal.
- As requested at the July meeting, I have prepared a proposal for consideration as a Chair's text. It attempts to limit the reference to financial incentives to the scope of Article 11 and Article 13 of Annex III, and also seeks to avoid selectively referencing from those articles.
- One participant proposes that the incentives referred relate to joint ventures with the Enterprise only, and therefore suggests merging paragraphs 1 and 2 and clarifying that financial incentives are only permitted to further a subset of the objectives listed in Article 13 paragraph 1 of annex III.
- One participant proposes including a reference to the Economic Planning Commission, with the explanation that UNCLOS Annex III Article 13 paragraph 14 requires recommendations of the Economic Planning Commission and the LTC before rules, regulations and procedures are adopted in relation to incentives to further the objectives set out in article 13(1). I invite comments.
- One participant has proposed a change "Contractors to undertake" to replace "to those Contractors undertaking" to more closely reflect Article 13(1)(d).
- One participant has proposed adding "regulatory and technical advice", in addition to incentives. I invite comments.
- One participant has proposed to clarify that any incentives should be aligned with efforts to reduce environmental impacts such as, for instance, through the use of zero-carbon fuels. The concept of incentives is supposed to take into account efforts of contractors that go beyond legal obligations and best business practices, in particular in the context of the environment. Contractors should not be given any incentives to execute what they are already obliged to do under the contract. I invite

comments.

- One participant proposes deletion of ‘Furthermore’ in DR63(2), as this seems to indicate incentives for joint arrangements with the Enterprise are further and additional to another type of incentive that may be offered, which we do not consider to be an accurate reading of UNCLOS.
- Three participants proposed that the Standards and Guidelines should include a clear definition and explanation of “financial incentives”. Another participant opposes this and considers it should be left to experts. I invite the view of the participants as to what that definition would include.
- Participants at the July meeting supported including paragraph 4. One participant now opposes paragraph 4.

Section 2

Liability for and determination of royalty

Regulation 64

Contractor shall pay royalty

A Contractor, from the date of commencement of Commercial Production, shall pay a royalty in respect of the mineral-bearing ore sold or removed without sale from the Contract Area as determined in appendix IV to these regulations pursuant to paragraph 1 of section 8 of the annex to the Agreement.

Explanation / Comment

- Following discussions at the March 2023 meeting where a number of participants expressed views that Commercial Production should be defined with more specificity, some participants submitted comments indicating that further guidance is needed concerning the definition of “Commercial Production”. One participant has expressed concerns about commercially strategic stockpiling.

[Regulation 64Bis

Determination of the applicable equalization measure

1. If a Contractor’s most recent Equalization Measure Audit confirms that:
 - (a) the Contractor does not have any Tax Exemptions from its Sponsoring State(s); and
 - (b) the Contractor does not receive any Subsidies from its Sponsoring State(s),then the Contractor shall pay the Top-up Profit Share Payment to the Authority.
2. If a Contractor’s most recent Equalization Measure Audit confirms that:
 - (a) the Contractor does have Tax Exemptions from its Sponsoring State(s); and/or
 - (b) the Contractor does receive Subsidies from its Sponsoring State(s),then the Contractor shall pay the Additional Royalty to the Authority.
3. A Contractor shall ensure that an Equalization Measure Audit shall be carried out prior to the commencement of Commercial Production and periodically thereafter as determined by the Authority in accordance with the relevant Standard and applicable Guidelines. Promptly on its completion a Contractor shall forward a copy of the Equalization Measure Audit to the [Secretary-General][Commission].
4. A Contractor will pay for each Equalization Measure Audit, which shall be undertaken by an Independent Auditor in accordance with the relevant Standard and applicable Guidelines.
5. A Contractor and Sponsoring State(s) shall fully assist an Independent Auditor undertaking an Equalization Measure Audit and shall provide the Independent Auditor with all relevant

documentation, including but not limited to the Contractor's audited accounts, any sponsorship agreement or other arrangements between the Contractor or any of its Related Entities and the Sponsoring State(s) or any other government authority in any jurisdiction, any contract, and any other documents that evidence or provide the Contractor with an actual or potential Tax Exemption or Subsidy.

6. If a Contractor or any of its Related Entities, at any time after the initial Equalization Measure Audit has been completed, enters into, or otherwise agrees, or receives the benefit of, any arrangement that could be considered to provide the Contractor with an actual or potential Tax Exemption or Subsidy, the Contractor shall immediately notify the [Secretary-General][Commission]. The [Commission] may, in accordance with the relevant Standard and applicable Guidelines, determine that an Equalization Measure Audit must be carried out.

Regulation 64Ter **Additional Royalty**

1. The Additional Royalty payable under Regulation 64Bis is in addition to the royalty provided for in Regulation 64.

2. If required under regulation [64Bis], a Contractor, from the [commencement of the Second Period of Commercial Production][fifth anniversary of the date of commencement of Commercial Production], shall pay an Additional Royalty in respect of mineral-bearing ore sold or removed without sale from the Contract Area as provided for in Appendix IV to these regulations.

3. The Authority shall set an Applicable Additional Royalty Rate in respect of the Additional Royalty to be paid by the Contractor to the Authority for the Minerals which constitute polymetallic nodules, as set out in the relevant Standard and applicable Guidelines.

4. The Applicable Additional Royalty Rate shall be [8%].

5. The Additional Royalty payable to the Authority for each [royalty return period][Calendar Year] shall be equal to X minus Y, where:

- (a) X is the product of the Applicable Additional Royalty Rate multiplied by the Aggregate Relevant Metal Value for that [royalty return period][Calendar Year]; and
- (b) Y is any amount of Allowable Sponsoring State Tax that has not been deducted in previous [royalty return periods][Calendar Years] when calculating an Additional Royalty payment or a Top-up Profit Share Payment,

calculated in accordance with the Standard and taking into account the Guidelines. In no circumstances shall the Additional Royalty be less than zero.

6. A payment from a Contractor to the Sponsoring State(s) is an Allowable Sponsoring State Tax, where:

- (a) the payment is an actual cash payment made by the Contractor to its Sponsoring State(s) in respect of taxes and/or royalties [related to activities associated with][accruing from seabed mining under] the exploitation contract;
- (b) there is a [signed letter][receipt] from the Sponsoring State's tax authority stating the actual cash amount paid by the Contractor to the Sponsoring State for taxes and/or royalties [related to activities associated with][accruing from seabed mining under] the exploitation contract; and
- (c) where there is a signed letter from an Independent Auditor confirming the actual cash amount paid by the Contractor to the Sponsoring State for taxes and/or royalties [related to activities associated with][accruing from seabed mining under] the exploitation contract.

7. The Contractor shall pay for the audit referred to in regulation [64Ter.6(c)].

8. [Draft Regulations 27, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 89 shall apply to the Additional Royalty as they apply to the royalty.]
9. Appendix IV definitions apply to the Additional Royalty as they apply to the royalty.
10. Draft Standard sections 1 to 4 apply to the Additional Royalty as they apply to the royalty.]

Regulation 64Qua

Top-up Profit Share Payment

1. If required under regulation [64Bis], a Contractor, from the [commencement of the Second Period of Commercial Production][fifth anniversary of the date of commencement of Commercial Production], shall pay a Top-up Profit Share Payment [as provided for in Appendix IV to these regulations].
2. The Authority shall set an Assumed CIT Rate in respect of Top-up Profit Share Payment to be paid by the Contractor to the Authority, as set out in the relevant Standard and applicable Guidelines.
3. The Assumed CIT Rate shall be [25%].
4. The Top-up Profit Share Payment payable to the Authority for each [royalty return period][Calendar Year] shall be equal to A minus B, where:
 - (a) A is the Assumed CIT Rate multiplied by Profits for that [royalty return period][Calendar Year]; and
 - (b) B is Total Eligible Payments for that year,

calculated in accordance with the Standard and taking into account the Guidelines. In no circumstances shall the Top-up Profit Share Payment be less than zero.
5. Profits for the [royalty return period][Calendar Year] are equal to C plus D plus E (without double counting) where:
 - (a) C is the sum of the Income for that [royalty return period][Calendar Year] from Relevant Activities from all Related Entities that have not met the Inclusion Criteria;
 - (b) D is the sum of the Income for that [royalty return period][Calendar Year] from all activities from all Related Entities that have met the Inclusion Criteria; and
 - (c) E is the Income of the Contractor for that [royalty return period][Calendar Year].
6. Total Eligible Payments for a [royalty return period][Calendar Year] are equal to Eligible Royalty Payments to the Sponsoring State(s) for that [royalty return period][Calendar Year] plus Eligible Tax Payments for that [royalty return period][Calendar Year].
7. Eligible Royalty Payments are royalties payable to the Sponsoring State(s) by the Contractor [related to activities associated with][accruing from seabed mining under] the exploitation contract.
8. Eligible Tax Payments are equal to F plus G, where:
 - (a) F is the sum of Covered Taxes [incurred][paid] by all Related Entities to the Sponsoring State(s) or any other government authority in any jurisdiction arising due to Income that has been included in the calculation of Profits provided for by regulation 64Qua.5 for that [royalty return period][Calendar Year]. Any payment made to any Sponsoring State(s) or any other government authority due to Income not included in the definition of Profits in Draft Regulation 64Qua.2 is not an Eligible Tax Payment; and
 - (b) G is Covered Taxes [incurred][paid] by the Contractor to the Sponsoring State(s) [or any other government authority in any jurisdiction] for that [royalty return period][Calendar Year].

9. A Contractor shall lodge with the Secretary-General a Top-up Profit Share Return not later than 90 Days after the end of each [royalty return period][Calendar Year]
10. A Top-up Profit Share Return shall include the following information for each [royalty return period][Calendar Year], in accordance with the Standard and taking into account the Guidelines:
- (a) the Top-up Profit Share Payment due, Profits, Income, Income included in Profits, Total Eligible Payments, Eligible Royalty Payments, and Eligible Tax Payments for that [royalty return period][Calendar Year];
 - (b) for each Related Entity, whether it meets the Inclusion Criteria;
 - (c) for each Related Entity that meets the Inclusion Criteria, its Income, Total Eligible Payments, and Eligible Tax Payments;
 - (d) for each Related Entity that does not meet the Inclusion Criteria, its Income from relevant Activities, Total Eligible Payments, and Eligible Tax Payments;
 - (e) audited accounts for the Contractor and its Related Entities;
 - (f) for each Related Entity that does not meet the Inclusion Criteria, audited segmented accounts for each of those Related Entities showing the Income, Eligible Tax Payments and Covered Tax payments from Relevant Activities and separately from non-Relevant Activities; and
 - (g) any other information, document or anything required under the Standards, Guidelines or reasonably requested by the Authority for the administration and validation of the Top Up Profit Share Payment.
11. A Profit Share Audit shall be carried out by an Independent Auditor [employed by and reporting to the Authority and] in accordance with the relevant Standard and applicable Guidelines.
12. A Contractor will pay for each Profit Share Audit.

Regulation 64Qui
Applicable Standards for financial payments

The Authority shall adopt Standards [and Guidelines] providing for the effective operation of the Additional Royalty and Top-up Profit Share Payment, including but not limited to:

- (a) definitions of Inclusion Criteria, Subsidies, Relevant Activities, and Tax Exemptions;
- (b) applicable rates for the Assumed CIT Rate and Applicable Additional Royalty Rate;
- (c) definitions of Related Entities, Income and Covered Taxes that will be based to the greatest extent practical on the Pillar 2 Global Anti-Base Erosion Model Rules, or alternatively, may directly reference the relevant articles of the Pillar 2 Global Anti-Base Erosion Model Rules (as amended or updated from time to time);
- (d) the criteria an auditor must meet to be an Independent Auditor;
- (e) the criteria for the Equalization Measure Audit and Profit Share Independent Audit;
- (f) the fees for the Equalization Measure Audit and Profit Share Audit;
- (g) the format and required content of the Top-up Profit Share Return;
- (h) the penalties, fees, and interest that the Authority shall levy on a Contractor due to non-cooperation with an Independent Auditor, late submission of a Top-up Profit Share Return, failure to submit a Top-up Profit Share Return, submission of an incomplete Top-up Profit Share Return, late payment of the Top-up Profit Share Payment and non-payment of a Top-up Profit Share Payment; and
- (i) any other provisions as required.

Explanation / Comment

- The text proposal (based on a hybrid royalty and top up profit share equalization measure) submitted by a group of participants following the intersessional work on the equalisation measure has been included here, with further suggested amendments to align with existing text proposals. I invite comments on both the concepts and drafting. See also the additional proposed definitions which have been included for discussion purposes in the definitions section in Enclosure V of this document.
- If there is broad support for the proposal reflected in the text of DR 64Bis to DR 64Qui, I would propose that the text is moved into the various other draft regulations where similar issues are dealt with, for example moving some text to Appendix IV and the relevant Standards, and some text to the other draft regulations which deal with audit requirements, etc.
- The following explanation was submitted with the text proposal:

Under this measure, the contractor pays the additional royalty if it receives tax exemptions or subsidies (an indicative figure of 8% for the additional royalty is included square brackets in DR64ter, paragraph 5(a), but further modelling from MIT on the rate to be used will be required), and it pays the top-up profit share if it does not. The equalization measure is designed so that a contractor and its related entities paying at least 25% of their profits in taxes and royalties to sponsoring and other states pay nothing additional under the equalization measure.

The hybrid equalization measure demotivates tax avoidance by contractors and is better at equalization than the additional royalty only. The hybrid measure builds on definitions of income and taxes provided by the GloBe Rules, which simplifies administration and audit.

Standards and Guidelines will be needed to define terms and aspects of the implementation of the hybrid measure by the Authority. For example, an Equalization Measure Audit (DR 64Bis) will determine whether the contractor is liable to pay the Additional Royalty or the Top-up Profit Share Payment. The initial audit should be conducted prior to the commencement of commercial production to provide certainty to the contractor and the Authority. However, after the initial Equalization Measure Audit, further such audits may not need to be conducted annually and may be initiated only if the Authority believes that new tax exemptions or subsidies have been provided to the contractor since the last audit.

By way of another example, 'Inclusion Criteria' (DR 64Qua) will need to be defined to make it clear what activities of entities related to the contractor, or percentage of revenues of the related activities, are counted as falling within the 'mining perimeter'. This will avoid all related entities of a contractor being required to submit accounts to the Authority.

Regulation 65

Explanation / Comment

- At the March 2023 meeting the participants agreed to delete **Regulation 65** (Secretary-General may issue Guidelines) on the basis that the draft Regulations 94 and 95 already provides the Commission with the powers to make Standards and Guidelines.

Section 3

Royalty returns and payment of royalty

Regulation 66

Form of royalty returns

A royalty return lodged with the Secretary-General shall be in the form prescribed by ~~any the~~ Standards, ~~and taking into account any or~~ Guidelines and signed by the Contractor's designated official.

Explanation / Comment

- As a general point, I would suggest a review of all references to Standard(s) and Guideline(s) throughout the text to ensure there is consistency and also to take account of whether there will be one or multiple relevant and applicable Standards.

Regulation 67

Royalty return period

A royalty return period for the purposes of this Part is a half-year return period, from:

- (a) 1 January to 30 June; and
- (b) 1 July to 31 December.

Regulation 68

Lodging of royalty returns

1. A Contractor shall lodge with the Secretary-General a royalty return for ~~each Mining Area~~ the Contract Area not later than 90 Days after the end of the royalty return period in which the date of commencement of Commercial Production occurs, and thereafter not later than 90 Days after the end of each subsequent royalty return period for the duration of the exploitation contract.
2. In connection with any joint venture arrangement or a consortium of Contractors, one royalty return shall be submitted for the Contract Area by the joint venture or consortium.
3. A royalty return may be lodged electronically.

Explanation / Comment

- Regulation 64 requires royalties to be paid for the Contract Area. On the suggestion of a participant, I have adjusted the text of this regulation to harmonize.

Regulation 69

Error or mistake in royalty return

A Contractor shall notify the Secretary-General promptly of any error in calculation or mistake of fact in connection with a royalty return or payment of a royalty.

Regulation 70

Payment of royalty shown by royalty return

1. A Contractor shall pay the royalty due for a royalty return period on the Day the royalty return is required to be lodged. [The Council may request the advance payment of any royalty due by way of instalment where special circumstances exist, in accordance with relevant Standards and [Guidelines] [rules, regulations and procedures of the Authority], to reflect for instance impacts on ecosystem services and the natural capital.]
2. Payments to the Authority shall be made in United States dollars or other foreign currency which is freely convertible and approved in accordance with relevant Standards.
- 2.bis. A Contractor shall declare the currency to be used in the payment of royalties [in the exploitation contract] [prior to the commencement of Commercial Production].
- 2.ter. Unless otherwise decided by the Council, a Contractor may only change the currency used for the payment of royalties on the anniversary of the fifth year of Commercial Production and at the end of every subsequent [fifth] year of Commercial Production [after requesting the change of currency, and

only after obtaining [authorization from the Authority][approval of the Council], which shall decide on this after assessing that income will not be affected by the requested change].

[ALT 2. bis/ter. The currency to be used in the payment of royalties must be stated in the exploitation contract and declared before the commencement of Commercial Production. Such currency may be changed by previous request of the Contractor and approval by the Council at the end of every subsequent fifth year of Commercial Production.]

3. All payments made to the Authority shall be made gross net and shall be free of any deductions, transmission fees, levies or other charges.

[4. The Council may approve the payment of any royalty due by way of instalment where it determines that special [and extenuating] circumstances of force majeure exist, that justify payment by instalment, in accordance with [relevant][applicable] Standards, taking account of [relevant Guidelines] [rules, regulations and procedures of the Authority.]

Explanation / Comment
<p><i>Paragraph 1</i></p> <ul style="list-style-type: none">• One participant has proposed additional text in paragraph 1 in relation to advance payments. <u>I invite comments, including on whether the reference to Rules, Regulations, and Procedures should be changed to Standards and Guidelines as this is a reference to the royalty regime – or are other Rules, regulations, and Procedures considered to be applicable?</u>
<p><i>Paragraph 2</i></p> <ul style="list-style-type: none">• Participants at the July meeting supported this paragraph as now drafted.
<p><i>New paragraph 2.bis</i></p> <ul style="list-style-type: none">• Participants at the July meeting supported this paragraph as drafted. One additional change has now been proposed for greater certainty.
<p><i>New paragraph 2.ter</i></p> <ul style="list-style-type: none">• This paragraph was supported by participants at the July meeting. Two participants have now proposed new language to ensure that the Authority’s income will not be negatively affected. <u>I welcome views on this additional language.</u>• One participant has now raised a question as to how frequently currency changes should be permitted. <u>I invite views on how frequently currency can be changed after the initial five year period.</u>• One participant has proposed a simplified Alt paragraph to replace paragraphs 2bis and 2 ter. <u>I invite comments.</u>
<p><i>Paragraph 4</i></p> <ul style="list-style-type: none">• Participants at the July meeting supported paragraph 4 as now drafted, and proposed that there should be a definition of force majeure. One participant proposed that the circumstances for using instalment payments should be further clarified in the relevant Standards, and force majeure is suggested to be one of the circumstances. One participant now proposes that “special circumstances” should be sufficient. One participant now proposes its deletion of paragraph 4. <u>I invite comments, including on: (i) a definition of force majeure; and (ii) whether the reference to Rules, Regulations, and Procedures should be changed to Standards and Guidelines as this is a reference to the royalty regime – or are other Rules, regulations, and Procedures considered to be applicable?</u>

Regulation 71

Information to be submitted

1. A royalty return shall include the following information for each royalty return period, in accordance with Standards and taking into account the Guidelines:

- (a) The quantity in wet metric tons and dry metric tons of mineral-bearing ore recovered from each Mining Area;
- (b) The quantity and value by Mineral in wet metric tons and dry metric tons of the mineral-bearing ore shipped from the ~~Mining Area-Contract Area~~; The value, grades and the basis of the valuation (by Mineral and Metal) of the mineral-bearing ore sold or removed without sale from the ~~Mining Area-Contract Area~~, as verified by a Suitably Qualified Person and supported by a representative chemical analysis of the ore by a certified laboratory, with the cost of weighing and testing to be borne by the Contractor;
- (c) [Details of all contracts [and amendments to contracts] and sale or exchange agreements relating to the mineral-bearing ore sold or removed without sale from the Contract Area]; and
- (d) A calculation of the royalty payable ~~in accordance with section 3~~, including any adjustment made to the prior royalty return period and a declaration signed by a designated official of the Contractor that the royalty return is accurate and correct.
- (e) [Details of all revenues and operating costs associated with activities in handling and processing, to the degree available.]

2. In respect of a final royalty return period ending on the date of expiry, surrender or termination of the exploitation contract, the Contractor shall provide:

- (a) A final calculation of the royalty payable;
- (b) Details of any refund or overpayment of royalty claimed; and
- (c) The quantity and value (by Mineral and Metal) of all closing stocks of the mineral-bearing ore.

3. Within 90 Days from the end of a Calendar Year, the Contractor shall provide the Secretary-General and the Sponsoring State or States with a statement from an auditor or certified independent accountant that the royalty calculation for that Calendar Year:

- (a) Is based on proper accounts and records properly kept and is in agreement with those accounts and records; and
- (b) Complies with these regulations and is accurate and correct.

Explanation / Comment

- Some participants have proposed changing “mineral-bearing” to “metal-bearing”, and “mineral” to “metal”, throughout this Regulation, because the mineralogy of nodules is fluid depending upon the level of desiccation and moisture content. I have not included this change as “metal-bearing” is a subset of “mineral-bearing” in the context of the definitions of Mineral and Metal in the Schedule, and so narrower. However, as previously noted, the Guidelines should require distinctions by Metal.

Paragraph 1

- At the July meeting participants supported the text referencing collecting both wet (at time of extraction) and dry (calculated outside of Area) weights. Some participants have proposed to further clarify the definition and difference between dry and wet nodules and an agreed procedure for converting wet metric tons to dry metric tons in the Standards. I do not propose a conversion formula in the text. To my understanding, the most reliable measure to ensure consistency in analysis is to use DMT. The modelling assumes reporting and assays are done on the basis of dry

metric tons (DMT). Calculations of royalties will need to be against DMT, however, contractors should be required to submit information on both the wet metric tons (WMT) and DMT collected from the area for data collection and audit purposes. Additional technical specifications and parameters (such as the point(s) in time at which wet metric tons should be measured, and a requirement to report details of the moisture content) may be included in Standards and Guidelines as already contemplated.

- Regulation 71 refers to sale or removal without sale from the Mining Area (now proposed to refer to the Contract Area). For accuracy and consistency, weighing and sampling should take place at the same Valuation Point (as defined in Appendix IV) irrespective of whether there is a sale.
- Some participants propose that suitably qualified person and certified laboratory be qualified in the Guidelines; that this should be “as defined by ISO standards”; and that a list of approved persons and certified laboratories could be maintain by the Council. I welcome language proposals.
- One participant proposes deleting subparagraph 1(c) as these materials may be confidential, and in any case, serve no purpose.
- One participant has proposed a new subparagraph 1(e) to ensure that the Authority is appropriately informed, to the degree possible, of each sale, shipment, transfer, exchange or other disposal beyond the Contract Area so that it can ascertain that the same standards, including environmental standards are deployed throughout the value chain.

Regulation 72

Authority may request additional information

The Secretary-General may, by notice to a Contractor who has lodged a royalty return, request the Contractor to provide, by the date stated in the notice, which shall be no later than 90 days from the date of the notice, information to support the matters stated in the royalty return.

Regulation 73

Overpayment of royalty

1. Where a royalty return shows any overpayment of royalties, a Contractor may apply to the Secretary-General to request a refund of any such overpayment. [Contractors will properly demonstrate that an overpayment was made, and support their claim with all necessary documentation and justifications. The Secretary-General shall authorize refunds as an exceptional measure, but no more than [XX] times for the same Contractor.]
2. Where no such request is received by the Secretary-General within 90 Days of the due date of submission of the relevant royalty return, the Authority shall carry forward any overpayment and credit it against a future royalty amount payable under this Part, or, if the exploitation contract has expired, refund the amount within 90 days.
3. Any request to reduce a royalty-related amount payable by a Contractor must be made within [one year of an applicable financial report] [five years] [three years] [six months] after the Day the relevant royalty return was lodged with the Authority.
4. Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount within 90 days provided he or she determines that such refund is properly due. The Secretary-General may request, and the Contractor shall provide, such additional information or confirmation, as he or she considers necessary to determine that such refund is correct and due to a Contractor.

Explanation / Comment

Paragraph 1

One participant has proposed language that would impose additional obligations and restrictions on contractors seeking refund, on the explanation that overpaying royalty and then requesting refunds could become a path for obtaining other indirect benefits, such as corporate tax reductions in contractors' home countries, or others. I invite comments on the proposal.

Paragraph 2

- Some participants have proposed that relevant contents be added to paragraph 2 to deal with the situation that the contract has expired and no future royalty is needed. For example, if the contractor does not request a refund of any such overpayment within 90 days, and the contractor does not need to pay any future royalties upon expiration of the contract. Prior to the March 2023 session, I proposed text to address this situation, reflecting the time limits proposed in the preceding Regulation.

Paragraph 3

- Two participants propose changing “5 years” to “6 months” on the basis that a five year period for paragraph 3 is too long. One participant proposes changing “5 years” to “one year of an applicable financial report”. One participant proposes 3 years. I welcome views on these proposals.

[Regulation 73bis title]

1. Where a royalty return shows any underpayment of royalties, the Secretary-General must demand payment from the Contractor within [XX] number of days.

2. If no payment is received, the Authority shall add the payment due to the next period of royalty collection.

3. Proper measures shall be taken against contractors who do not pay the underpaid royalty in due time.]

Explanation / Comment

- One participant has proposed a new regulation to address underpayment. I invite comments on whether this is necessary, or whether underpayment of royalties would constitute a non-payment of royalty (for the underpaid portion) and so be covered by the existing provisions requiring payment of royalties and imposing penalties for late or non-payment.

Section 4 Records, inspection and audit

Regulation 74

Proper books and records to be kept

1. A Contractor shall keep and maintain, at a place agreed by the Contractor and the Secretary-General, complete and accurate records relating to the Minerals recovered in order to verify and support all returns or any other accounting or financial reports required by the Authority in relation to Exploitation.

2. The Contractor shall prepare such records in conformity with internationally accepted accounting principles [and appropriate environmental, social and governance standards and disclosure requirements, including but not limited to, IFRS, ISSB, TFCF, TFND,] and ~~that~~ verify,

in connection with each Mining Area [and the Contract Area], inter alia:

- (a) Details of the quantity and grade of the Minerals, by Metal, recovered from [each Mining Area and the Contract Area];
- (b) Details of sales, shipments, transfers, exchanges and other disposals of Minerals, by Metal, from ~~[the Mining Area]~~ [each Mining Area and the Contract Area], including the time, destination, value and basis of valuation and the quantity and grade of each sale, shipment, transfer, exchange or other disposal;
- (c) Details of all eligible capital expenditure and liabilities by category of expenditure and liability incurred in [each Mining Area and the Contract Area] or in direct support of activities within ~~[the Mining Area]~~ [each Mining Area and the Contract Area]; and
- (d) Details of all revenues and operating costs associated with activities in ~~[the Mining Area]~~ [each Mining Area and the Contract Area].

[(e) Details of any sales, shipments, transfers, exchanges and other disposals of any Minerals, to the degree available.]

3. A Contractor shall supply and file such records at such times as may be required by the Authority under these regulations and within 60 Days of the receipt of any such request from the Secretary-General.

4. A Contractor shall maintain all records for the duration of the contract and a period of [10 years] [2 years] following the expiry or cancellation of the contract and including duration of the Closure Plan, and make such records available for [inspection and] audit under regulation 75.

Explanation / Comment

- This Regulation refers to Minerals recovered from the Mining Area, as opposed to mineral-bearing ore recovered. As discussed in the July meeting, reference to “Metals” has been added, given that it is for record keeping purposes. This will aid auditing and analysis. It seems particularly appropriate given the level of detail of this Regulation (i.e. with respect to operating costs, and with respect to transfers and disposals).
- Additionally, these Regulations require Contractors to keep records of quantity and grade of Minerals recovered from each Mining Area and the Contract Area, and the details of shipments from the Mining Area. This supports the formulation of a royalty based on weight and sampling at a Valuation Point, and calculation of the royalty based on weight and assays per shipment, as drafted here.

Paragraph 1

- One participant has proposed specifying that records must be kept both digitally and physically, and online and physically. I propose retaining the current drafting as it is neutral as to technology and covers records irrespective of where they are kept, as this should future-proof the obligation.

Paragraph 2

- Paragraph 2 as drafted was supported by participants at the July meeting.
- One participant now proposes that contractors should not have to keep records for each particular Mining Area but only for the Contract Area. I invite comments.
- One participant proposes to add additional language in paragraph 2, to clarify that internationally accepted accounting principles should include appropriate environmental, social and governance standards and disclosure requirements. I invite comments.
- One participant proposes to add a subparagraph 2(e) to ensure information on the entire value chain is collected for environmental disclosure. I invite comments.

Paragraph 4

- Paragraph 4 as drafted was supported by participants at the July meeting. One participant has now

proposed changing 10 years to 2 years; and removing “inspection” (as it considers this to be addressed in Part XI). I invite comments.

Regulation 75

Audit [and inspection] by the Authority

1. The Secretary-General, [by itself or at the request of the Council] or Council, may [request an audit of the Contractor’s records and [all subcontractors’ records associated with the exploitation activities] [the records of subcontractors’ directly engaged in the Contractor’s exploitation activities] in the Area.

2. Any such audit shall be undertaken at the Contractor’s sole cost and shall be performed by [an [[Council approved] Inspector in accordance with Part XI of these regulations] [independent auditor approved by the Council].

3. An Inspector may, in connection with a liability for a royalty payment:

- (a) [Audit] [Inspect] [all corporate offices, plants and] the mining and on-board processing facilities with a view to verifying the accuracy of [all information reported and the accuracy of] the equipment measuring the quantity of Mineral ore [sold or removed without sale from the Contract Area];
- (b) Inspect, audit ~~and examine~~ any [relevant] documents, papers, records and data [available at the Contractor’s offices or on-board any mining vessel or Installation];
- (c) Require any duly authorized representative of the Contractor to answer any [relevant] questions in connection with the ~~inspection~~ audit and provide any missing documents, papers, records and data; and
- (d) Make and retain copies or extracts of any documents or records relevant to the subject matter of the ~~inspection~~ audit and provide a Contractor with a list of such copies or extracts.

[3. ALT An auditor may, in connection with a liability for a royalty payment require assistance from the Inspectors, through the Secretary-General, and the Inspectors shall assist the auditors in discharging their functions under this part]

4. [For the purposes of an audit] The Contractor shall make available to an [Inspector] [auditor] such financial records and information contemplated as reasonably required by the Secretary-General to determine compliance with this Part.

5. Members of the Authority, in particular a Sponsoring State or States, shall, to the best of their abilities, cooperate with and assist the [Secretary-General] [relevant organ of the Authority] and any [Inspector] [auditor] in the carrying out of any audit under this regulation, and shall facilitate access to the records of a Contractor by an [Inspector] [auditor] and assist in the exchange of information relevant to a Contractor’s obligations under this Part.

Explanation / Comment

- One participant proposes that this regulation duplicates Part XI on inspections and so should be deleted except to state “The Council or Compliance Committee may request an audit of the Contractor’s records, which shall be undertaken at the Contractor’s sole cost.” That participant also proposes that this regulation should be bracketed until Regulation 99 is progressed.
- Participants have mixed views on whether to include the word “inspection” in the title and in the body of the regulation. One participant argues that Audit and inspection are two different issues. Part XI of the Draft Regulations, entitled "Inspection, compliance and enforcement ", already contains provisions on matters relating to inspection, so it is proposed that Regulation 75 should only deal with audit matters, and that the contents relating to inspection should be provided for in Part XI. I invite comments.

- As mentioned in the Drafting Note to Regulation 74, this Regulation also refers to Minerals recovered from the Mining Area, as opposed to mineral-bearing ore recovered. It is recommend including additional detailed requirements in the Guidelines to also refer to “mineral-bearing ore” and “Metals”.
- This Regulation as drafted suggests the possibility of some assaying of samples on-board the harvesting and/or transfer vessel. While the Valuation Point is the point that might be used as the weighing and sampling point, it is possible that detailed assaying of the samples is likely to take place at onshore facilities, and the grade will then be attributed retrospectively to the Valuation Point for the purpose of calculating the royalty on that shipment. It is therefore important to prescribe the appropriate parameters for independent assaying in the Guidelines.

Paragraph 1

- At the March 2023 meeting the participants agreed to paragraphs 1, 2, 4 and 5. Two participants have proposed reopening the text of paragraph 1 to extend it to all Contractors’ and their sub-contractors’ records, not just those in relation to activities in the Area. One participant has proposed to narrow it to only subcontractor’s directly engaged in activities in the area.

Paragraph 2

- Two participants proposed that the Inspector be “Council-approved”. Some participants have proposed that a financial audit should be undertaken by an independent auditor or accountant, rather than an Inspector. One participant proposes that it should be expressly stated as an “independent auditor”, as Annex IV, article 11, paragraph 5, of the Convention provides that "the records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor appointed by the Council." One participant proposes to remove “Council approved” as an Inspector will be Council approved under Part XI as being included on the roster with relevant audit experience. I propose that text regarding the qualifications and approval of Inspectors be addressed in the Standards, and invite participants to propose text. This will also ensure greater consistency. I propose that if there is support for that proposal, adjusting the qualifications and functions of an Inspector, to require an independent auditor or accountant, could be addressed in Part XI itself, which contains provisions on Inspectors’ functions.
- One participant proposes that “questions” in paragraph 3(c) should be restricted to “relevant” questions.

Paragraph 3 ALT

- One participant proposes a new para 3, as it considers that most of the contents concerning inspections in Paragraph 3 of this regulation are covered in Part XI of the draft regulations " Inspection, compliance and enforcement ", and should not be repeated in this paragraph. Audit and inspection are two separate issues, and the auditor may, through the Secretary-General, request the assistance of inspectors if inspections are required in order to carry out its responsibilities with respect to royalties.

Paragraph 5

- Two participants recommend the phrase "to the best of their abilities" be removed. Their view is that the members of the Authority, including Sponsoring States must cooperate and assist the Secretary-General.

Regulation 76

Assessment by the Authority

1. Where the Secretary-General so determines, taking into account the relevant guidance provided by the Council and following any audit under this Part, or by otherwise becoming aware that any royalty return is not accurate and correct in accordance with this Part, the Secretary-General may, by written notice to a Contractor, request any additional information that the Secretary- General considers reasonable in the circumstances, including the report of an auditor.

2. A Contractor shall provide such information requested by the Secretary- General within 60 Days of the date of such request, together with any further information the Contractor requires the Secretary-General to take into consideration.

3. The Secretary-General may, within 60 Days of the expiry of the period prescribed in paragraph 2 above, and after giving due consideration to any information submitted under paragraph 2, make an assessment of any royalty liability that the Secretary-General considers ought to be levied in accordance with this Part.

4. The Secretary-General shall provide the Contractor with written notice of any proposed assessment under paragraph 3 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall confirm or revise the assessment made under paragraph 3 above.

[4bis. If the Contractor is not satisfied with the Secretary-General's confirmation or revision of the assessment, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the Secretary-General to consider within 30 Days of a decision being made. The Secretary-General shall then re-consider and either affirm, revise, or revoke the assessment, taking into account the further information provided by the Contractor, within 60 Days.]

5. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 4 [or, where applicable, paragraph 4bis].

6. Except in cases of fraud or negligence, no assessment may be made under this regulation after the expiration of 6 years from the date on which the relevant royalty return is lodged.

Explanation / Comment

- One participant suggests there is a duplication between paragraphs 2 and 5; and Regulation 72.
- One participant has proposed an administrative review mechanism (4bis). I invite comments.

Section 5 Anti-avoidance measures

Regulation 77 General anti-avoidance rule

1. Where the Secretary-General reasonably considers that a Contractor has entered into any scheme, arrangement or understanding or has undertaken any steps which, directly or indirectly:

- (a) Result in the avoidance, postponement or reduction of a liability for any payment of a royalty under this Part;
- (b) Have not been carried out for bona fide commercial purposes; or
- (c) Have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for any payment of a royalty ; then the Secretary- General shall determine the liability for a royalty payment under this part as if the avoidance, postponement or reduction of such liability had not been carried out by the Contractor and in accordance with this Part.

2. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall determine the liability for a royalty payment under this part

for the original or revised amount. [If the Contractor is not satisfied with the Secretary-General's determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the Secretary-General to consider within 30 Days of a decision being made. The Secretary-General shall then re-consider and either affirm, revise, or revoke the decision, taking into account the further information provided by the Contractor, within 60 Days.]

[2 ALT 2. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The [Secretary-General] shall consider such representations and shall determine the liability for a royalty for the original or revised amount. [If the Contractor is not satisfied with the Secretary-General's determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the [Secretary-General/the Council] to consider. The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with the Finance Committee. The Council shall then re-consider and either affirm, revise, or revoke the decision made by the [Secretary-General]].

3. The Contractor shall pay any such ~~royalty~~ liability under this part within 30 Days of the date of the determination made by the Secretary-General under paragraph 2.

[4. If the Contractor ~~incurs~~ ~~is found to be in~~ is in ~~a~~ ~~gross and persistent breach~~ ~~serious, persistent and willful violation~~ ~~non-compliance of payment of a~~ ~~of royalty~~ any payment obligations in accordance with this Part, the Council shall suspend or rescind the ~~exploitation~~ contract pursuant to regulation 103 of these Regulations ~~and the Contactor's company principals shall be barred from direct or indirect involvement with any Contractor or subcontractor operating in the Area for a period of [10] years.~~]

Explanation / Comment
<p>Paragraph 2</p> <ul style="list-style-type: none">Some participants note that if a Contractor disagrees with the decision of the Secretary-General, the Contractor will have no recourse or method for reviewing a decision unless the Contractor commences costly dispute resolution procedures pursuant to Section 5, Part XI of the Convention. <u>I invite for discussions of this view.</u>One participant proposes more oversight of the Secretary-General's decision, and proposes 2 ALT. <u>I invite comments.</u> <p>Paragraph 4</p> <ul style="list-style-type: none">Previously participants proposed adding this additional paragraph to address cases where a Contractor repeatedly fails to comply with its payment duties, namely that the Council shall be entitled to terminate the contract in accordance with DR 103. This suggestion is made in support of DR 80, which only provides for conventional (pecuniary) penalties. I included language that would allow the Council to effect both the termination and suspension of the contract and to have the power to impose conventional penalties for breaches of a Contractor.Three participants now propose additional language in this paragraph that would bar the Contractor, or its company principals from direct or indirect involvement with any Contractor or Subcontractor, operating in the Area for a period of, for example, 10 years. However, they recognize that this addition may be better suited to be included in Draft Regulation 103. <u>I invite comments on the proposed text and proposed changes to Regulation 103.</u>Several participants have proposed changes to paragraph 4. Some participants noted that Article 185 of the Convention limits suspension to circumstances of gross and persistent violations. <u>I invite views on the text.</u> One participant proposes that more appropriate language to use here would be 'serious, persistent and wilful violation' in accordance with Article 18 of Annex III,

which relates to Contractor compliance with their contract and the rules of the ISA.

- One participant proposed deletion of paragraph 4 expressed as follows: “If the Contractor incurs in a non-compliance of payment of a royalty in accordance with this Part, the Council shall suspend or rescind the Contract pursuant to regulation 103 of these Regulations.” It said Regulation 77 is targeted at anti-avoidance and not compliance per se. It said matters relating to any violation under this Part VII are addressed by Regulation 80 which appears adequate for this purpose and now reflects suspension or termination.
- A participant proposed paragraph 4 is deleted and discussed in Part XI of the Draft Regulations, entitled "Inspection, compliance and enforcement".

Regulation 78

Arm’s-length adjustments

1. For the purposes of this regulation:
 - (a) “Arm’s length”, in relation to contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not related parties and without one party influencing another; and
 - (b) “Arm’s-length value”, in relation to costs, prices and revenues, means the value that a willing buyer and willing seller, who are not related parties, would agree to in a competitive environment.
2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm’s-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Council may adjust the value of such costs, prices and revenues to reflect an arm’s-length value, taking into account the recommendations of the Commission, in accordance with internationally accepted principles.
3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. If the Contractor submits written representations, the Secretary-General shall affirm, amend or revoke the adjustment, taking into account the further information provided by the Contractor, within 60 Days of being provided with that further information.

[4.The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with the Finance Committee. The Council shall decide the value of relevant costs, prices and revenues based on the recommendation.]

Explanation / Comment

- In July participants supported the text as drafted. One participant has now proposed a new paragraph 4, to ensure more oversight of the Secretary-General’s decision. I invite comments.

Section 6

Interest and penalties

Regulation 79

Interest on unpaid royalty

Where any royalty or other amount levied under this Part remains wholly or partly unpaid after the date it becomes due and payable, a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding [5] [10] [20] per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable in accordance with Appendix IV.

Explanation / Comment

- Participants have proposed different proposals for the interest rate. One participant proposes 5% for a month delay and 10% for one to three month delay. I invite participants to settle on a percentage.

Regulation 80

Monetary penalties and suspension or termination of exploitation contract

Subject to regulation 103 (6), [and depending on the seriousness of the breach,] the Council may impose a monetary penalty [or][and may] suspend or terminate the exploitation contract in respect of a [gross and persistent] [material breach] [violation] under this Part [or of the contract] [and company principals would be barred from direct or indirect involvement with any Contractor or Subcontractor operating in the Area for a period of 10 years].

Explanation / Comment

- Two participants have proposed that this Regulation (and Regulation 77) should include the possibility of "barring company principals from direct or indirect involvement with any Contractor or Subcontractors operating in the Area for a period of, for example, 10 years." However, they note this may better fit within Regulation 103. I invite proposals for changes to Regulation 103.
- Two participants suggest that criteria be included for "seriousness of the breach", although they note this too may be best included in Regulation 103. I invite them to propose changes to Regulation 103.
- Some participants have proposed inclusion of a materiality obligation. They say that suspension and termination of an exploitation contract may only occur in the event of a material breach under the Convention. Another participant proposes "gross and persistent".
- One participant proposes that this paragraph should be deleted, as it overlaps and seems to conflict with other provisions in the Regulations including DR103, and Annex X, and is inconsistent with the Convention, which requires serious, persistent and willful violations of the fundamental terms of the contract, and the rules of the ISA, as well as warnings, before a contractor's rights under their contract can be suspended or terminated by the ISA. It proposes revisiting this regulation after negotiations on DR103 have progressed.

Section 7

Review of payment mechanism

Regulation 81

Review of system of payments

1. The system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement, shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter [as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area] [in accordance with relevant Standards] [as well as all observed environmental impacts].

2. The Council, based on the recommendations of the Commission [and in consultation with Contractors], may revise the system of payments [in the light of changing circumstances] and following any review under paragraph 1 above, [taking into account the economic viability of the project] save that any revision shall only apply [to existing exploitation contracts by agreement between the Authority and the Contractor] [after five years of Commercial Production have been completed under that exploitation contract] [from five years after such revising would be adopted] [to (i) new exploitation contracts agreed between the Authority and a Contractor after the revised system of payments is in effect; and (ii) existing exploitation contracts if the Authority and Contractors so agree].]

[2 ALT The Council, based on the recommendations of the Commission and following a review under paragraph 1, may decide to adjust the existing system of payments or introduce a new system of payments, taking into account the level of maturity and development of Exploitation activities in the Area.

3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to an existing system of payments, or an introduction of a new system of payments, and may consider changes to all applicable Rules Regulations and Procedures (RRPs) [including any relevant Standards and Guidelines].

4. A review of the system of payments shall consider all Resource Categories unless otherwise decided by the Council.

5. A change to the system of payments shall only apply by agreement between the Authority and the Contractor for Contract Areas that have already commenced Commercial Production.]

[3. Recommendations of the Council to the Assembly under paragraph 2:

(a) take into account the sufficiency of the benefits that are being generated for humankind as a whole in return for the loss of the common heritage of humankind;

(b) reflect the objectives contained in Article 13, Annex III of the Convention, including to ensure optimum revenues for the Authority from the proceeds of Commercial Production;

(b) follow the process and consider relevant matters as set out in the applicable Standard; and

(c) be informed by consultations with relevant experts and stakeholders including the Legal and Technical Commission, Economic Planning Commission and Finance Committee.]

Explanation / Comment

Paragraph 1

- Two participants propose that review intervals be determined by Standards rather than the Council.
- One participant proposes to add environmental impacts

Paragraph 2

- One participant proposes not “taking into account the economic viability of the project” as it suggests case by case decision making, which it considers is not the intention.
- I invite comments on whether Contractors should be consulted.
- I invite comments on the three options for review after 5 years.

Paragraph 2 ALT (and paragraphs 3, 4, 5

- One participant proposes merging Regulations 81 and 82.
- Two participants propose a new paragraph 2 and additional paragraphs 3, 4, 5 to align the review of the system of payments (DR 81) with the review of the rates of payments (DR 82). Section 8, paragraph 1(c) of the Annex to the Implementation Agreement provides that any change to the system of payments may only apply to existing contracts at the election of the contractor and this shall be implemented by agreement between the Authority and the contractor. However, such agreement is not a pre-requisite for the application of a change in the payment rates (DR 82). The need to make a clear distinction between the two provides a strong rationale to avoid merging text under DR 81 and 82 into a single regulation. Specific elements to be included in the review process, including timelines, processes, and methodologies are proposed for inclusion in Standards will ensure greater transparency and predictability of the process from initiation to completion. Draft Standards are included as an appendix to this submission. A compliance and enforcement function (Regulation 103) will also be important. I invite comments.

Paragraph 3

- I invite comments on the new proposed paragraph 3.

Regulation 82

Review of rates of payments

[1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter [as determined by the Council] [and every five years thereafter, applying to all contractors that have commenced Commercial Production, unless otherwise determined by the Council], [taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.]

[2. The Council, based on the recommendations of the Commission and in consultation with Contractors, may adjust the rates of payments in the light of such recommendations and consultation, [taking into account the economic viability of the project,] save that any adjustment to the rates of payments may only apply to existing exploitation contracts [from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations] [after five years of commercial production have been completed under that exploitation contract]].]

3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the Applicable Royalty Rate under appendix IV and the manner and basis of the calculation of a royalty [, including triggers for price-based royalties].

ALT

1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter ~~[in accordance with relevant standards] [as determined by the Council taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.]~~

2. The Council, based on the recommendations of the Commission ~~[and in consultation with Contractors]~~, may ~~[decide to]~~ adjust the rates of payments ~~[taking into account the Resource Category and the level of maturity and development of Exploitation activities in the Area].~~

~~[2 bis. A review of the rates of payments shall consider all Resource Categories unless otherwise decided by the Council.]~~

~~[2 ter. An adjustment to the rates of payments shall [apply to all Contract Areas but shall] only apply by agreement between the Authority and the Contractor for Contract Areas where each of the following conditions are met:~~

~~a) the first five years of Commercial Production in the Contract Area have elapsed; and~~

~~b) the Contractor does not hold rights to another Contract Area of the same Resource Category for which the first five years of Commercial Production has elapsed.]~~

3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the ~~[rate associated with any payment mechanism adopted under the [Rules Regulations and Procedures,] [including any Standards and Guidelines] including the manner and basis of their calculation, as well as the establishment of rates of payments for new relevant metals or minerals that are likely to be commercially exploited during the next review cycle.]~~

Explanation / Comment

- Two participants propose an alternative – 5 paragraphs to replace the three, with additional complementary drafting in the Standards. It notes that a systematic, periodic review of the rates would help ensure that the financial mechanisms meet the needs and objectives of the Authority. Specific elements to be included in the review process, including timelines, processes, and methodologies are proposed for inclusion in Standards and will ensure greater transparency and predictability of the process from initiation to completion. I invite comments on the alternative paragraphs.
- One participant proposes deletion of paragraph 2.
- I note that while paragraph 1(c) of section 8 of the Annex to the Agreement indicates that “a change to a system of payments may apply to existing contracts only at the election of the contractor” no such requirement is laid out regarding a change to rates. The fiscal stabilization provisions currently included in DR 82 are inconsistent with current global norms, as evidenced by the 2020 OECD Guiding Principles on Durable Extractive Contracts. It is proposed to have a simple, regular review of rate of payments every 5 years following the commencement of Commercial Production in the Area.
- One participant previously proposed triggers for price-based royalties. It proposes that the Regulation should be clear about what constitutes a review of system of payments *vis-à-vis* a review of rates of payment. A review of rates of payment should explicitly include reference to price “triggers” under variable royalty rate regimes. Some participants outlined their opposition to the inclusion of “triggers for price-based royalties” in paragraph 3 on the basis that the terms are ambiguous and appear to be inconsistent with the proposed system of payments set out in the Convention and the Part XI Implementation Agreement.

Section 8

Payments to the Authority

Regulation 83

Recording in Seabed Mining Register

1. All payment figures made by the Contractor to the Authority under this Part are publicly available.
2. All payments received by the Authority from Contractors shall be recorded in the Seabed Mining Register.

Regulation 83 bis

Beneficial Ownership Registry

1. A Contractor shall submit information [as part of its annual report pursuant to regulation 38] to the Secretary-General to be included in a Beneficial Ownership Registry in accordance with [relevant] [applicable] Standards and [applicable] Guidelines.
2. The Beneficial Ownership Registry shall be published through the Seabed Mining Register.

Explanation / Comment

- Participants in July supported the regulation as drafted. One has now proposed additional language linking it to the annual report. On participant has now proposed its deletion.

Other Relevant Draft Regulations in Parts I, III and IX

Part III Rights and obligations of Contractors

Regulation 23

Transfer of rights and obligations under an exploitation contract

1. A Contractor may transfer its rights and obligations under an exploitation contract in whole or in part only with the prior written consent of the [Sponsoring State], and the Council [(such consent not to be unreasonably withheld)], based on the recommendations of the Commission [and with notification to the Sponsoring State].
2. The Contractor and transferee shall jointly inform the Secretary-General of any application to transfer the rights and obligations under an exploitation contract. The Secretary-General shall transmit that application to the Commission, which shall give its recommendation to the Council.
3. The Commission shall consider and decide whether to recommend to the Council to consent to the application for consent to transfer at its next available meeting, provided that the documentation has been circulated at least 30 Days prior to that meeting.
4. [Before the Commission can make a recommendation to the Council for approval of a transfer] The Commission shall verify that the transferee:
 - a. Meets the requirements of a qualified applicant as set out in regulation 5;
 - b. Has submitted a certificate of sponsorship as set out in regulation 6;
 - c. Has submitted a form of application as set out in regulation 7 [if the Secretary-General considers that there is a Material Change to the Plan of Work];
 - d. Has paid all relevant fees and levies established by the Council, including the administrative fee as set out in appendix II;
d bis Accepts to be bound by the Plan of Work and the Environmental Plans, applicable at the time of transfer;
[d ter Has provided written assurances of the Transferee's holding, subsidiaries, affiliated and ultimate parent companies, agencies and partnerships, as applicable, accepting responsibility as set out in regulation 18bis.]
 - e. Meets the criteria set out in regulation s 12 and 13(4); [and]
 - f. Has deposited an Environmental Performance Guarantee as set out in regulation 26[: and][.]
 - g. has submitted ownership information to the Beneficial Ownership Registry.

4 ALT: An application to transfer the rights and obligations under an exploitation contract shall be subject to the requirements under regulations 5 to 16.

4. Bis. If at the time of the transfer a Material Change arises this should be addressed in accordance with Regulation 57.

5. The Commission shall not recommend approval of the transfer if it would:

- a. Involve conferring on the transferee a Plan of Work, the approval of which would be forbidden by article 6 (3) (c) of annex III to the Convention; or
- b. Allow the transferee to monopolize the conduct of activities in the Area [with regard to the Resource category covered by the exploitation contract or the transferee would monopolize or significantly control the production of any single mineral or metal produced globally; or]
- c. If any circumstances under regulations 15(2) or (3) are applicable.

6. Where the exploitation contract is subject to an encumbrance registered in the Seabed Mining Register, the Commission shall not recommend consent to the transfer unless it has received evidence of consent to the transfer from the beneficiary of the encumbrance.

[6bis. A Contractor shall pay a Transfer Profit Share, which shall be levied on a pro rata basis by the Authority on gains made from the direct or indirect transfer of rights under an exploitation contract.]

[6.ter. The Authority shall publish a Standard for the effective operation of the Transfer Profit Share.]

7. Where the Commission determines that the requirements of paragraphs 4, 5 ~~and~~ 6 [and 7 of this regulation] ~~above~~ have been fulfilled, it shall recommend approval of the application for consent to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not withhold consent to a transfer if the requirements of this regulation are complied with. Once the Council has received a recommendation from the Commission, the Council will inform the Contractor of the Council's decision within 30 Days.

8. A transfer is validly effected only upon:

- a. Execution of the assignment and novation agreement between the Authority, the transferor and the transferee;
- b. Payment of the prescribed transfer fee pursuant to appendix II; and
- c. Recording by the Secretary-General of the transfer in the Seabed Mining Register.

[(d) Payment of the Transfer Profit Share in accordance with paragraph 7 of this regulation and the relevant Standard.]

9. The assignment and novation agreement shall be signed on behalf of the Authority by the Secretary-General or by a duly authorized representative, and on behalf of the transferor and the transferee by their duly authorized representatives.

~~10. [The terms and conditions of the transferee's 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 Secretary-General or a duly authorized representative executes the assignment and novation agreement.]~~

Explanation / Comment

Paragraph 1

- Two participants have proposed that the Sponsoring State must consent, rather than only being notified. I propose to accept this drafting.

Paragraph 2

- Participants in July agreed to paragraph 2 as drafted.

Paragraph 3

- Participants in July agreed to paragraph 3 as drafted.

Paragraph 4

- A participant has proposed a new subparagraph (d) *ter*. I invite comments.
- A participant has proposed an alternative to paragraph 4. I invite comments.

Paragraph 4 bis

- Participants in July supported paragraph 4 bis as drafted.

Paragraph 5

- Two participants have proposed that “monopolize” should be defined (e.g. a transfer could be prohibited if it provides a transferee with over 75% of the value of production in the Area once at least two permitted areas have already entered production). I welcome proposals.
- One participant has proposed new language in paragraph 6 (new requirements on the Commission) to broaden the circumstances in which a transfer cannot be recommended for approval – such that conduct of activities in the Area cannot be monopolised but also global production of any single mineral or metal cannot be monopolised. This may be a complex assessment. I welcome proposals.
- One participant has proposed deletion of subparagraph b.

Paragraphs 6 bis and ter

- Some participants propose amending DR 23 with a view to integrating an obligation for the Authority to levy a Transfer Profit Share on gains over a certain threshold generated from the transfer (direct or indirect) of rights under an exploitation contract. To this end, two new paragraphs have been added after paragraph 6 of DR 23. The specific parameters and elements related to administering the Transfer Profit Share are proposed to be included in a Standard, which will facilitate subsequent reviews and/or adjustments as necessary. The participants contend that the proposal is consistent with Article 13 1(b) of Annex III of the Convention and Section 8 1(b) of the Annex to the Agreement given that the proposed Transfer Profit Share is comparable to Capital Gains Tax (CGT), which is widely implemented in landbased mining jurisdictions

Paragraph 7

- Participants in July supported Paragraph 7 as drafted.

Paragraph 10

- Participants in July supported the deletion of paragraph 10.

Regulation 27

Commencement of Commercial Production ~~production~~

1. Where the requirements of regulation 25 are satisfied and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26, the Contractor, consistent with Good Industry Practice, shall make reasonable efforts to bring ~~the~~ each Mining Area into Commercial Production in accordance with the Plan of Work.

[2.bis. Once the Contractor determines that it is engaging in sustained large-scale recovery operations which yield a quantity of materials in excess of the thresholds specified in the Standards, the Contractor shall promptly notify the Secretary-General of the proposed date of commencement of Commercial Production together with supporting documentation and other evidence as specified in the Standards. The Secretary-General shall transmit the notification and supporting documentation and evidence

to the Commission, which shall consider the proposal and supporting materials and approve or reject the Contractor's proposed date.

3. Promptly following approval or rejection by the Commission, the Secretary-General shall, as applicable, confirm the date of commencement of Commercial Production to the Contractor, or notify the Contractor of the rejection and invite the Contractor to re-submit its proposed date of commencement of Commercial Production under Regulation 27(2).

4. Upon confirmation, the Secretary-General shall notify members of the Authority, in particular coastal states [in close proximity] [adjacent] to the [Mining Area][Contract Area], that Commercial Production has begun and the location of the Mining Area(s).

5. The date of commencement of Commercial Production, will be the date confirmed to the Contractor according to Regulation 27(3).]

ALT to 2 - 5

[2 The commencement of Commercial Production shall be based on the maintenance of a certain level of production capacity for a specified number of days in accordance with the relevant Standard.

3 Any failure on the part of the Contractor to comply with this regulation and the relevant Standard may be considered under the General anti-avoidance rule established pursuant to Regulation 77 and other applicable Rules, Regulations, and Procedures.]

Explanation / Comment

- In July participants supported the text as drafted.
- One participant has now proposed replacing paragraphs 2 – 5 with paragraphs ALT 2 and ALT 3, and moving the deleted paragraphs, with some amendments (including to guard against stockpiling), to the Standards. I invite comments.
- In response to comments from a number of participants regarding the need for specificity with respect to Commercial Production, in February I proposed new text on commencement of Commercial Production here at Regulation 27 that: (i) provides greater specificity and an objective standard of assessment, to be included in Standards, and (ii) allows for verification and confirmation by the Authority. I would welcome further proposals by participants on what the “thresholds” or parameters to be included in the Standards would be, including comments on the proposed thresholds now in the Standard.
- I note that if the definition of Commercial Production in the Schedule to the Regulations is amended, this text may require consequential harmonization amendments.

Regulation 38

Annual report

1. A Contractor shall, within 90 Days of the end of each Calendar Year, submit an annual report to the Secretary-General, ~~in such format as may be prescribed from time to time in the relevant Guidelines, covering~~ regarding its activities in the Contract Area and reporting on compliance with the terms of the exploitation contract.

2. Such annual reports shall be in accordance with relevant Standards and Guidelines and include:

- (a) Details of the Exploitation work carried out during the Calendar Year, including maps, charts and graphs illustrating the work that has been done and the data and results obtained, reported against and noting variance from the approved Plan of Work;

- (b) The quantity and [quality] [~~dry metal content~~] of the Resources [recovered] [~~extracted~~] during the period and the [volume] [~~tonnage~~] [~~in dry metric tons and wet metric tons~~] of Minerals and metals [produced] [~~recovered~~], marketed and sold during the Calendar Year, reported against the [~~Plan of Work~~] [Mining Workplan];
- (c) Details of the equipment used to carry out Exploitation, and in operation at the end of the period, if different from the Plan of Work;
- (d) An annual financial report, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, of the actual and direct Exploitation expenditures, which are the capital expenditures and operating costs of the Contractor in carrying out the programme of activities during the Contractor's accounting year in respect of the Contract Area, together with an annual statement of the computation of payments paid or payable by the Contractor to the Authority, governments, state enterprises, and other contractors, as well as payments and other forms of financial benefit received by the Contractor from Sponsoring States, and reported against the Financing Plan;
- ~~(e) Health and safety information, including details of any accidents or Incidents arising during the period and actions taken in respect of the Contractor's health and safety procedures; Information on compliance with health, labour and safety standards;~~
- (e) bis Details of any accidents or Incidents arising during the period
- (f) Details of training carried out in accordance with the Training Plan;
- (g) The actual results [~~and data~~] obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against, where applicable, any criteria [~~and thresholds included in the applicable Standards, and against the Environmental Management and Monitoring Plan, [and taking into account environmental [goals and] objectives pursuant to [these Regulations,] the Regional Environmental Management Plan where applicable]] ~~[- technical Standards and indicators, including environmental objectives and standards, pursuant to the applicable Regional Environmental Management Plan and the Environmental Management and Monitoring Plan]~~, together with details of any response actions implemented under the plan and the actual costs of compliance with the plan;~~
- [(g)bis a statement indicating whether and how the results obtained from environmental monitoring programmes help to reduce knowledge gaps, particularly with respect to environmental impacts of activities in the Area;
- (g)ter details of all revenues and operating costs associated with activities in handling and processing, including carbon emissions, to the degree available to support transparent identification of BEP.]
- (h) A statement that all risk management systems and procedures have been followed and remain in place, together with a report on exceptions and the results of any verification and audit undertaken internally or by independent competent persons, [~~appointed or employed by the Contractor~~];
- (i) Evidence that insurance is maintained, including the amount of any deductibles and self-insurance, together with the details and amount of any claims made or amounts recovered from insurers during the period;
- (j) [Details of any [~~material~~] changes made in connection with subcontractors engaged by the Contractor during the Calendar Year;]
- [(j)bis Details about any changes made to the Contractor's business structure or collaborations, including but not limited to their subcontractors, holding, subsidiaries, affiliates and ultimate parent companies, agencies and partnerships;]
- (k) The results of any Exploration activities, including updated data and information on the

grade and quality of Resources and reserves identified in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves [and applicable Standards and Guidelines];

- (l) A statement that the Contractor's Financing Plan is adequate for the following period; and
- (m) Details of any [proposed] [significant] modification to the Plan of Work [and the reasons for such modifications].
 - (n) [Details of any changes made to the Contractor's Environmental Management System in accordance with Regulation 46;
 - (o) [Details of any consultations carried out with coastal States, other marine users, or any other Stakeholders, including pursuant to Regulations 31;
 - (p) [A summary of any complaints or whistleblowing reports received during the reporting period and details of how these have been dealt with;
 - (q) [A summary of any performance assessments pursuant to regulation 52, or review of activities pursuant to regulation 58 during the reporting period;
 - (r) [A summary of how the Contractor has dealt with any inspection reports, inspector instructions, compliance notices, monetary penalties or any other regulatory monitoring or enforcement action taken by the ISA or the Sponsoring State in relation to contractor compliance during the reporting period;
 - (s) [Evidence that the Environmental Performance Guarantee has been paid or maintained in accordance with the contract terms;
 - (t) [A summary report of the discharges registered in accordance with regulation 50(5);
 - (u) [The planned date of Closure, and an explanation of any changes to the date, if applicable, in accordance with regulation 59]

[(2)bis. [The Secretariat shall arrange for the effective management of the submitted information in order to overcome existing gaps in knowledge concerning the marine ecosystems including their sensitivity and resilience, the determination of environmental quality standards and appropriate exploitation equipment.][2 bis ALT The Commission shall review annual reports received, and shall prepare and submit to the Council a summary report which shall record any trends or findings from the review, and any related recommendations for the Council's consideration. The report should include any information relevant to the formulation by the Authority of rules, regulations and procedures concerning protection of the marine environment and safety.]

[2(ter). In reviewing annual reports, the Commission shall prepare for the Council a report that summarises trends or findings from the annual reports, including but not limited to any knowledge and information relevant to the continuous improvement of the regulation and management of activities in the Area, with a particular emphasis on information relevant to better understanding marine ecosystems and the impacts of activities in the Area on such ecosystems.]

3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted. [To this end, Contractors shall structure the annual reports such that any Confidential Information can be clearly identified and extracted.]

Explanation / Comment
<ul style="list-style-type: none">• Two participants have proposed new subparagraphs in paragraph 2. They include references to reports or documents that are required to be reported by contractors in different parts of the regulations, that are not included in this list of annual reporting requirements. <u>I invite comments.</u>• One participant previously proposed an additional paragraph between 2 and 3, with the following explanation: Standards and/or Guidelines for the Annual Report and the Annual Financial Report

will be needed. Guidelines are likely to be needed for more than just formatting of the Annual report. Standards and Guidelines could, among other areas, incorporate evolving best practices regarding financial disclosure in the extractives sector. These could, for example, specify internationally accepted accounting principles to be used (i.e., Generally Accepted Financial Practices (GAAP) or International Financial Reporting Standards (IFRS)), the definition of what constitutes a “direct Exploitation Expenditure”, and the definition of a “payment and other forms of financial benefit” (e.g., subsidies, deductions, etc.). Contractor payments to contractors (including the Enterprise), State enterprises, States, and Sponsoring States should be disclosed publicly in line with terrestrial mining best practices. This is in line with International standards, like the Extractives Industries Transparency Initiative (EITI), and national best practices, such as the Extractives Sector Transparency Measures Act (ESTMA) in Canada which requires that certain businesses involved in the commercial development of oil, gas and minerals report the payments they make to governments in Canada and abroad. Payments to the contractor from Sponsoring States should also be disclosed. This information will be needed to determine the effective tax rate for contractors and to enable reviews of the system of payment.

- One participant has proposed alternative drafting to 2 bis (2 bis ALT), which is intended to be a broader formulation. I invite comments.
- Some participants proposed that Regulation (2)bis is out of place in the current section, which otherwise deals exclusively with a Contractor’s annual report. They suggest removing this provision and placing it elsewhere in the Regulations. I invite proposals as to placement.
- I invite comments on the new paragraph 2.ter that has been proposed.
- Thresholds for information disclosure requirements may need to be defined. I invite proposals.
- Necessary amendments are needed to DR 89 regarding confidentiality. I invite proposals.
- Necessary amendments may be needed to DR 83 Recording in Seabed Mining Registry. I invite proposals.
- “State enterprises” is referred to in AGXI/A/S6(1)(d)(ii). However, something more definitive may be needed into the Schedule or Standards/Guidelines. Payments to Sponsoring States will be important for determining a nodule transfer price in the future. I invite proposals.

Regulation 39

Books, records and samples

1. A Contractor shall keep [at a place agreed between the Contractor and the Compliance Committee, and make available for inspection and audit in accordance with these regulations,] a complete and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles, which must include information that fully discloses [all revenue and] actual and direct expenditures [liabilities] for Exploitation, including capital expenditures and operating costs and such other information as will facilitate an effective audit of the Contractor’s expenditures and costs.

[1.bis The Contractor shall keep the books, account, and records pursuant to paragraph 1 at a place agreed between the Contractor and the [Compliance Committee], and shall make them available for inspection and audit in accordance with these regulations.]

2. A Contractor shall maintain maps, geological, mining and mineral analysis reports, production records, processing records, records of sales or use of Minerals, [records of port inspections, customs records, processing plant receipt data or records,] environmental data, archives and samples and any other data, information and samples connected with the Exploitation activities in accordance with [Standards and taking into account Guidelines] [the Authority’s data and information management policy].
3. ~~To the extent practical, a~~ A Contractor shall keep, in good condition, a representative portion of samples or cores, as the case may be, of the Resource category, from each sample collection period

identified in the ~~relevant~~ Standard[s] and [Guidelines], together with biological samples, obtained in the course of Exploitation until the termination of the [exploitation contract] [Closure Plan]. Samples shall be maintained taking into account the relevant Guidelines, which shall provide the option for the Contractor to maintain them itself or to have such maintenance performed on its behalf in whole or in part by a third party.

4. Upon request of the [Secretary-General,] [Inspectors, or Compliance Committee,] the Contractor shall deliver to the Secretary-General for analysis a portion of any sample or core obtained during the course of Exploitation activities.

5. A Contractor shall, subject to reasonable notice, permit full access by the [Secretary-General,] [Inspectors, or Compliance Committee,] to the data, information and samples.

Explanation / Comment

- Accurate samples are integral to the correct calculation of royalties. The collection and storage of samples will be essential to accountability, royalty calculation, and auditing. Removing the words “to the extent practicable” will allow for a stronger obligation, commensurate with the level of obligation ascribed to the keeping of other records (the other record keeping obligations are not qualified by the inclusion of the words “to the extent practicable”).
- One participant suggested that the BBNJ Article 10 will be relevant.
- One participant proposed that these provisions should be merged (and aligned) with DR74 (‘Proper books and records to be kept’) which covers similar matters.
- The Regulation as currently drafted references the Guidelines for the purposes of detailing storage requirements for the samples; however, it should also link to the draft Guidelines in the present Chair’s text for the purposes of how many samples should be collected, how often they should be collected, at what points/times during the loading of a Shipment samples should be collected, and other relevant matters. One participant proposes removing the reference to Guidelines.

Paragraph 2

- One participant queried whether the Authority’s data management strategy is about management of the ISA’s data rather than contractor data management, and has proposed a change accordingly.

Paragraph 3

- Some participants support “closure plan” as the appropriate end point. These participants proposed the use of “exploitation contract” rather than “Closure Plan”. They also expressed concern that the current text of Regulation 39 may lack clarity, and suggest clarifying the purpose of sample collection in Regulation 39 (i.e. samples retained for knowledge purposes or samples collected for assaying to determine royalty payment). Alternatively, they suggest setting clear guidelines in the accompanying Standard and Guidelines.

Regulation 89

Confidentiality of information

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

2. “Confidential Information” means:

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

- (b) Data and information relating to personnel matters, the health records of individual employees or other documents in which employees have a reasonable expectation of privacy, and other matters that involve the privacy of individuals;
- (c) Data and information which have been categorized as Confidential Information by the Council; and
- (d) Data and information designated by the Contractor as Confidential Information at the time it was disclosed to the Authority, provided that, subject to paragraph 5 below, such designation is deemed to be well founded by the [Secretary-General] [the Data Committee in accordance with the relevant Standard] on the basis that there would be substantial risk of serious or unfair economic prejudice [risk of harm] if the data and information were to be released;
- (e) [documents exempt from disclosure due to attorney-client privilege].

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

- (a) Are generally known or publicly available from other sources;
- (b) Have been previously made available by the owner to others without an obligation concerning its confidentiality;
- (c) Are already in the possession of the Authority with no obligation concerning its confidentiality;
- (d) Are required to be disclosed under the Rules of the Authority [to protect the Marine Environment or human health and safety];
- (e) Are necessary for the formulation [from time to time] by the Authority of rules, regulations and procedures [and decisions of the Authority] concerning the protection and preservation of the Marine Environment and safety, other than equipment design data;
- (f) Relate to the protection and preservation of the Marine Environment, [provided that unless] the Secretary-General may agree that such information is regarded as Confidential Information for a reasonable period where there are bona fide academic reasons for delaying its release;

[(f)alt. Relate to the protection and preservation of the Marine Environment, provided that the Secretary-General may designate such information as Confidential Information for a reasonable period, subject to such conditions as may be appropriate, where the Commission agrees that there are bona fide academic reasons for delaying its release on the terms proposed by the Secretary-General and the decision including the reasons are reported to Council;]

[(f) ALT.2. Are environmental data, including all baseline and monitoring information.]

- (g) Are an award or judgment in connection with activities in the Area (save in relation to any Confidential Information contained in such award or judgment which may be redacted);
- (h) [Relate to contractor payments to the Authority, governments, state enterprises, other contractors, as well as payments and other forms of financial benefit received by the contractor from Sponsoring States;
- (i) Relate to beneficial ownership of contractors;

[(j) [Relate to Sponsorship Agreements or other contractual arrangements between contractors and Sponsoring States; or]

(k) The Contractor to which the data and information relates has given prior written consent to its disclosure.

(l) The area to which the data and information relates is no longer covered by an exploitation contract; provided that following the expiration of a period of 10 years ISBA/25/C/WP.1 56/117 19-04869 after it was passed to the Secretary-General,

Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor and the [Secretary-General], [in accordance with the relevant Guidelines] and save any data and information relating to personnel matters under paragraph 2 (b) above.

(m) are in a category designated by the Council as not being Confidential Information.

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

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary - General the Information or any part of it as Confidential Information [describing, in general and non-prejudicial terms, any information redacted or required to be withheld from publication on the basis of confidentiality with an explanation of the reasons. The Secretariat shall publish a copy of any such notice received upon receipt]. If the Secretary-General [a member state, or another Stakeholder] objects to such designation [within a period of 30 Days], the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation [and consult the Data Committee as appropriate]. During the consultations, the Secretary-General shall take into account any relevant [Standard or] policy guidance from the Council. [The Secretary-General shall report to the Council regarding the types and quantities of data that are designated confidential in accordance with this paragraph.] Any dispute arising as to the nature of the data and information shall be dealt with [through the administrative procedure described in [insert here cross-reference to relevant provisions or Annex of the Regulations setting out administrative decision review procedures] [in accordance with Part XII of these regulations].

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

Explanation / Comment

- Participants have proposed amendments to Regulation 89 with the following explanation: Contractor payments to the Authority, governments, state enterprises, other contractors, as well as payments received by the contractor from Sponsoring States, should be disclosed publicly in line with terrestrial mining best practices. This is in line with international standards, like the Extractives Industries Transparency Initiative (EITI), and national best practices, such as the Extractives Sector Transparency Measures Act (ESTMA) in Canada which requires that certain businesses involved in the commercial development of oil, gas and minerals report the payments they make to governments in Canada and abroad. Payments to the contractor from Sponsoring States should also be disclosed. This information will be needed to determine the effective tax rate for contractors and enable reviews of the system of payment. Sponsorship Agreements should also be fully disclosed. A definition for these may be required in the Schedule: use of terms and scope. Beneficial ownership of contractors should also be disclosed as per best practice.
- Some participants submit that the text should mandate the publication, and process for publication, of sponsorship agreements, other contractual arrangements between Sponsoring States and Contractors, and payments between Contractors and Sponsoring States. I invite comments and proposals.
- One participant has proposed deleting subparagraph (a) as it would be inconsistent to consider some data confidential under an exploration contract but not under an exploitation contract. The relevant exploration contract would have expired by the time this provision becomes relevant. Any information carried over from the exploration phase that should remain confidential can be justified under paragraphs 2(b) – (e).
- One participant has proposed the “Data Committee” to be the decision maker for confidential information, rather than the Secretary-General. Designating data as confidential should not be done ad

hoc on a case-by-case basis but should follow pre-agreed, transparent criteria.

- One participant proposes broadening paragraph 5, as given the importance of transparency and public participation as good governance standards, para 5 should be widened to allow stakeholders other than the Secretary-General to object to data being kept confidential and introduce a transparent process to evaluate confidentiality.
- Necessary amendments may be needed to DR 83 Recording in Seabed Mining Registry
- “State enterprises” are referred to in AGXI/A/S6(1)(d)(ii). However, something more definitive may be needed into the Schedule or Standards/Guidelines. Payments to Sponsoring States will be important for determining a nodule transfer price in the future.

Enclosure II

Appendix IV

Determination of a royalty liability

Appendix IV sets out the methodology for the calculation of a royalty payable under Regulation 64 in respect of the categories of resources. It is indicative and presented for discussion only at this time.

Several updates have been made since the last version of Appendix IV. Therefore, I have replaced the Appendix in its entirety.

A participant has expressed support for the Two Stage Variable Ad Valorem (Option 4) and the gross metal value calculation as set out in the Standard.

In the present appendix:

Aggregate Relevant Metal Value means the aggregate of the Relevant Metal Values for each Relevant Metal calculated in accordance with the [applicable](#) Standard.

Applicable Royalty Rate means the royalty rate set out in the [applicable](#) Standard, which may be by a decision of the Council following any review under these regulations.

Average Listed Price means the average listed price for a Relevant Metal, calculated in accordance with the [applicable](#) Standard.

Average Grade means the average metal content of the Relevant Metal calculated in accordance with the [applicable](#) Standard.

Relevant Metal means a metal contained in the mineral-bearing ore identified and determined in accordance with the [applicable](#) Standard.

Relevant Metal Value(s) means the gross market value(s) of a Relevant Metal calculated in accordance with the [applicable](#) Standard.

Valuation Point is the first point of transfer of the mineral-bearing ore by delivery onto a vessel transporting the ore out of the Contract Area. [In the instance where the transfer of mineral-bearing ore onto another vessel does not take place, the valuation point shall be on board the original vessel before it leaves the Contract Area.](#)

Explanation / Comment

- In relation to the Valuation Point, further specificity may be required in the Guidelines to clarify as to when, during the transferring process, weighing and sampling may take place, given that it is likely to be a continuous process over hours, or days, to load a single shipment onto the transport vessel.
- Some participants have proposed to add “applicable” before each reference to “Standards” as there may be different Standards which apply to the various matters listed as defined terms in Appendix IV. [I have proposed including that change.](#)
- Some participants have proposed additional text for Valuation Point, with the following explanation: There are scenarios where the ore remains in the hold of the collector ship and is transferred directly out of the area without being transferred onto a transport ship. It is also possible

that the ships sink with the mineral-bearing ore in their hold. We recommend amending the definition of “Valuation Point” accordingly and recommend that any associated Guidelines also reflect this possibility. I have included text to address that possibility.

- Following the March 2023 negotiating round, one Contractor proposed a complete rewrite of Appendix IV. It considers the formulas for calculating the royalty to have design defects. The ore in the two formulas are valued according to the metal or mineral in the ore rather than the raw ore. It considers that the valuation should be based on the original ore rather than the metals in the ore. It also considers that the 1994 Implementation Agreement is based on the principle of establishing a payment system that should treat both the contractor and the ISA fairly, and any one-sided pursuit of maximizing benefits by either party deviates from this principle. It considers the payment rate should be set so that the mineral types from the deep-sea bed have the ability of fair market competition with similar mineral types from the land. It suggests adopting a lower royalty rate equivalent to similar types of ore on land during the first 5-year commercial production stage (and as outlined above, it should be priced using the original ore).

1. The Authority shall set a royalty rate

The Authority shall set an Applicable Royalty Rate in respect of the royalty to be paid by the Contractor to the Authority for Minerals which constitute polymetallic nodules, as set out in the Relevant Standard and ~~taking into account the any~~ Guidelines.

[1.bis. Additional Minerals

Additional Minerals shall be included in the calculation of the royalty should evidence become available that such minerals are being profitably extracted.

The Legal and Technical Commission shall recommend to the Council for decision whether additional Minerals shall be included.

The inclusion of additional Minerals in the determination of the royalty shall constitute a review of rates of payments as described in Regulation 82.]

Explanation / Comment

- Regulation 64 prescribes that a royalty will be paid by the Contractor. This paragraph 1 now establishes who will set and collect the royalty, and how it will be calculated. The paragraph only concerns polymetallic nodules. To maintain long term adaptability, it directs the details to the Standard and Guidelines.
- Some participants have proposed removing the reference to Guidelines. I propose to retain the reference, as it gives greater flexibility of options (including, for example, for worked examples in Guidelines). Regulations 94 and 95 set out when Standards will be used and when Guidelines will be used. I consider that the original text proposal, which would require the Authority to consider the Guidelines, would make consideration of the Guidelines (and therefore compliance with the Guidelines), binding.
- Participants have proposed different options for addressing additional metals. This is one such proposal, another is at the “Relevant Metals” section. I invite views of the participants on whether such updates could fall within the broader review and update mechanism contemplated under DR 81 and 82. I invite the submissions of participants on preferred approach for additional metals.

2. Calculation of royalty payable

The royalty payable to the Authority for each royalty return period shall be the product of the Applicable Royalty Rate multiplied by the Aggregate Relevant Metal Value for that royalty return

period, calculated in accordance with the Standard and taking into account the Guidelines.

Explanation / Comment

- Regulation 64 prescribes that a royalty will be paid; paragraph 1 of Appendix IV above states that the rate will be set by the Authority. This paragraph 2 establishes how the royalty payment will be calculated.
- To maintain long term adaptability, it directs the details to the Standard and Guidelines. Regulations 94 and 95 set out when Standards will be used and when Guidelines will be used. I consider that while most matters could be included in Standards, there is a role for Guidelines. Guidelines can be more easily changed than Standards, and therefore should be used for administrative and operational matters (such as forms to use etc.) as they can be kept current with industry practice, to ensure that the Authority is applying best practice and most current industry practice. They may also be useful for matters such as worked examples.
- I consider that the original text proposal makes consideration the Guidelines (and therefore compliance with the Guidelines), binding, as it requires the Authority to consider the Guidelines.

Enclosure III

Draft Standard

In the present Standard:

First Period of Commercial Production means a period of 5 years following the date of commencement of Commercial Production.

Explanation / Comment

- I invite views on whether it would be preferable for administrative purposes if the First Period of Commercial Production was to end at the end of a royalty return period.

Listed Price means:

- For copper, nickel and cobalt: the price (in United States dollars), quoted for the Relevant Metal in the Official Listing relating to that Relevant Metal for the relevant period.
- For manganese: the price (in United States dollars), quoted for manganese ore in the applicable Official Listing for the relevant period, the result of the following calculation:

$$(0.1 \times \text{EMM Price}) + (0.4 \times \text{LC FeMn Price}) + (0.4 \times \text{MC FeMn Price}) + (0.1 \times \text{HC FeMn Price})$$

~~Price) where:~~

~~(a) EMM Price means the price (in United States dollars), quoted for electrolytic manganese metal in the applicable Official Listing for the relevant period;~~

~~(b) LC FeMn Price means the price (in United States dollars), quoted for low-carbon ferromanganese in the applicable Official Listing for the relevant period;~~

~~(c) MC FeMn Price means the price (in United States dollars), quoted for medium-carbon ferromanganese in the applicable Official Listing for the relevant period; and~~

~~(d) HC FeMn Price means the price (in United States dollars), quoted for high-carbon ferromanganese in the applicable Official Listing for the relevant period.~~

Explanation / Comment

- Once the relevant indices have been settled, the applicable units for each quotation should be confirmed. It should also be confirmed that the relevant indices do in fact quote the prices for the relevant periods that are reflected by the draft Standards and Guidelines.
- To reflect the discussions of the OEWG, for manganese I have proposed text which features a manganese ore reference price. This also reflects the new work done by MIT in their updated modelling. I invite further discussion on this point, noting that some participants proposed using only the electrolytic manganese price as the reference price, while another submission proposed eventually moving to a nodule ore price as opposed to a composite based on individual metals prices.
- To expand further on the relevant participant's proposal to use an official listing of EMM only rather than the composite calculation originally proposed based on MIT's earlier modelling, the explanation for that proposal is as follows: *The MIT model assumed, and included costs*

and royalty rates consistent with this assumption, that manganese was processed to the electrolytic manganese metal (EMM) grade. If the royalty rates proposed are levied on a base containing different/lower manganese prices then the conclusions from the MIT model are no longer relevant and the royalty rates should be revised upwards to maintain ISA revenues. Likewise, the proposed minimum acceptable royalty rates assume that the royalty is levied on a base using the EMM price. If there is a change to the manganese price used then the royalty base will be lower and payments to the ISA will be lower, and we will then revise its minimum acceptable royalty rates upwards to maintain acceptable revenues for humankind. It is important to understand that the regulations are not dictating what manganese grade processors process manganese to. The royalty regulations are simply determining a base on which the royalty is applied. There is no reason that the Draft Regulations cannot use the EMM price for that base. Trying to understand exactly what grade processors will process manganese to is likely to be a fruitless and unconstructive task that will only serve to delay the Draft Regulations. Reasons for this include: a.) some nodules may be processed to the EMM grade, while others will be processed to a lower grade, b.) different contractors will sell nodules to different processors, and not all processors will process nodules to the same grade, c.) some contractors may not even know the full downstream sales and processing chain. They will sell unprocessed nodules and are not legally responsible for what happens to the metal in those nodules downstream. In short, the main criteria for the royalty base are that it is simple to calculate, easy to audit and results in significant revenues for the ISA. In addition review “Issue 3: The Valuation of Manganese” from the “African Group Speaking Notes on the Payment Regime” submitted on 15 January 2023, for further commentary to consider.

Official Listing means the quoted or published price of the Relevant Metals as specified for each Relevant Metal in the Guidelines.

Explanation / Comment

- The reference to the Guidelines is to provide greater flexibility for future changes. The Guidelines also provide for a determination to be made by the Authority or Council (as determined during the negotiations) as to a new index, should the current one cease to be published.

Second Period of Commercial Production ~~means the period commencing on the day following the last day of the First Period of Commercial Production.~~ means [a period of [x] years commencing on the day following the last day of the First Period of Commercial Production.] [the period commencing on the day following the last day of the First Period of Commercial Production.]

[Third Period of Commercial Production means the period commencing on the day following the last day of the Second Period of Commercial Production.]

Explanation / Comment

- Participants have proposed to define all periods of Commercial Production. I have proposed text to this effect, although noting that currently ‘Third Period of Commercial Production’ is not used in the text.
- As additional context, the two periods of Commercial Production were intended to reflect the two-stage ad valorem nature of Option 4, with the royalty rate increasing for the second period (namely the duration of the contract following an initial 5 year ramp up).

Shipment means each shipment of mineral-bearing ore by a vessel transporting the ore out of the Contract Area.

1. Relevant Metals

1. For the purpose of polymetallic nodules and appendix IV, [during the First Period of Commercial Production] Relevant Metals will be copper, nickel, cobalt and manganese [only].
2. During the Second Period of Commercial Production and subsequent periods of Commercial Production relevant metals will include copper, nickel, cobalt and manganese and may include other metals and substances, but only if there is substantial evidence that such other metals and substances are being processed from mineral-ore mined under the exploitation contract and are substantially increasing the value of polymetallic nodules mined in the area and in such case additional Standards will be published providing for the inclusion of these other metals and substances in aggregate relevant metal value.]

Explanation / Comment

- Participants have proposed different options for addressing additional metals. One proposal is to include text at Appendix IV. Another is here in the “Relevant Metals” section. Or such updates could be included within the broader review and update mechanism contemplated under DR 81 and 82.

2. Calculation of Average Grade

1. In respect of each Relevant Metal, the Average Grade shall be the metal content of that Relevant Metal expressed as a percentage per dry metric ton of mineral-bearing ore in a Shipment.
2. The metal content of each Relevant Metal shall be determined based on samples of the mineral bearing ore collected at the Valuation Point in accordance with the sampling and assaying procedures set out in the Standards and any Guidelines.

Explanation / Comment

- This provides for the royalty to be calculated based on the actual (sampled) metal content of each individual Shipment based on a number of samples taken at the Valuation Point during the loading of the transport vessel. This approach approximates the reality of the operations and the likely basis on which the product will be sold on a commercial basis.
- The MIT model assumes a consistent grade / content for each metal due to the fact that, for the purposes of analysing financials, MIT used the average composition and kept this constant. However, in practice the Contractors would need to measure actual composition for reporting and royalty calculations.
- Some participants have proposed removing the reference to Guidelines. I consider that while most matters could be included in the Standards, there is a role for Guidelines. Regulations 94 and 95 set out when Standards will be used and when Guidelines will be used. Guidelines can be more easily changed than Standards, and therefore should be used for administrative and operational matters (such as forms to use etc.) as they can be kept current with industry practice, to ensure that the Authority is applying best practice and most current industry practice. They may also be useful for matters such as worked examples.
- I consider that the original text proposal makes consideration the Guidelines (and therefore compliance with the Guidelines), binding, as it requires the Authority to consider the Guidelines, would make consideration of the Guidelines.

3. Calculation of Average Listed Price

The Average Listed Price for a Relevant Metal shall be the Listed Price for the Relevant Metal for the month during which loading of that Shipment commenced.

Explanation / Comment

- This calculates the royalty based on the market price applicable to each individual Shipment and avoids averaging market pricing across periods or Shipments. In calculating the price for each Shipment, it is preliminarily proposed that the average price is reported for that month (or some other period, if the OEWG agrees), on the basis that this approach is similar to that used in the pricing of bulk commodities in commercial contracts (i.e. the ‘quotational period’).
- The model uses a single price over a 12-month period because future price forecasts don’t exist on a more granular basis; and it should be noted that the model makes no reference to the time periods for calculating royalties in practice. MIT’s modelling has demonstrated that more accuracy (with respect to reflect actual market prices) is achieved by not averaging prices over long periods of time.

4. Calculation of Relevant Metal Value and Aggregate Relevant Metal Value

1. The value of the mineral-bearing ore for a royalty return period shall be the Aggregate Relevant Metal Value for that period.
2. The Aggregate Relevant Metal Value for a royalty return period shall be the aggregate of the Relevant Metal Values for each of the Relevant Metals for that period.
3. The Relevant Metal Value for each Relevant Metal during the royalty return period shall be calculated as follows:
 - (a) For each Shipment:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal
 - (b) For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment [which commenced loading] in the royalty return period

Where:

- (i) Quantity means the quantity (in dry metric tons) of the mineral-bearing ore in each Shipment [which commenced loading] in a royalty return period and calculated in the light of the applicable Guidelines.
- (ii) Average Grade is calculated in accordance with this Standard and in the light of the applicable Guidelines.
- (iii) Average Listed Price is calculated in accordance with this Standard and in the light of the applicable Guidelines.

5. Determination of the Applicable Royalty Rate

The Applicable Royalty Rate shall be:

~~Two stage variable ad valorem~~

1. For the First Period of Commercial Production, [2-3%]; and
~~[alt For the First Period of Commercial Production, [12%]; and]~~

2. ~~[For]~~~~[From]~~ the Second Period of Commercial Production, a rate no less than ~~[5-7.5 %]~~ and no greater than ~~[9-12.5 %]~~ determined by reference to the table below and the Notional Relevant Metal Value:

~~[2alt [For]~~~~[From]~~ the Second Period of Commercial Production, a rate no less than ~~[12%]~~ and no greater than ~~[25%]~~ determined by reference to the table below and the Notional Relevant Metal Value:]

Where:

- (a) Notional Relevant Metal Value means the [average Aggregate Relevant Metal Value per dry metric ton across all Shipments during the royalty return period].
- (b) The [average Aggregate Relevant Metal Value per dry metric ton across all Shipments during the royalty return period] shall be calculated by dividing the Aggregate Relevant Metal Value for that royalty return period by the total Quantity shipped during that royalty return period.

Notional Relevant Metal Value <i>(as may be adjusted in accordance with the Standards and Guidelines)</i>	Applicable Royalty Rate for [for] [from] Second Period of Commercial Production
Less than [US\$850] [US\$ 510] per dry metric ton ($x < \frac{\text{US\$850}}{t}$ [US\$ 510/t])	[5-7.5 %] [alt [12%]]
Greater than or equal to [US\$850] [US\$ 510] per dry metric ton but less than [US\$925] [US\$ 580] per dry metric ton ($\frac{\text{US\$850}}{t} \leq x < \frac{\text{US\$925}}{t}$ [US\$ 580/t])	[6 8.75 %] [alt [15.3%]]
Greater than or equal to [US\$925] [US\$ 580] per dry metric ton but less than [US\$1,000] [US\$ 650] per dry metric ton ($\frac{\text{US\$925}}{t} \leq x < \frac{\text{US\$1,000}}{t}$ [US\$ 650/t])	[7 10 %] [alt [18.5%]]
Greater than or equal to [US\$1,000] [US\$ 650] per dry metric ton and less than [US\$1,075] [US\$ 720] per dry metric ton ($\frac{\text{US\$1,000}}{t} \leq x < \frac{\text{US\$1,075}}{t}$ [US\$ 720/t])	[8-11.25 %] [alt [21.8%]]
Greater than or equal to [US\$1,075] [US\$ 720] per dry metric ton ($\frac{\text{US\$1,075}}{t} \leq x$)	[9 12.5 %] [alt [25%]]

Explanation / Comment

- The applicable rates and thresholds provided are placeholders. I invite further discussion on this issue.
- The new proposed rates and thresholds reflect the new work done by MIT in the updated model, noting however that the rates and thresholds need to be considered alongside other proposals which still require further discussion, including that relating to an additional royalty, as proposed in the OEWG, and in two submissions received from participants.
- In particular, one participant proposed changes to the rates and to the proposal to move to a one-stage rather than two-stage model. The alternative text rates reflected here are based on that submission, which notably referenced an EMM price for the manganese component, and also proposed an additional royalty. The proposed alternative rates should be considered in that context.
- The drafting here provides for the variable rate to be set based on the average market price per DMT for all Shipments during the 6-month royalty return period. Although the MIT model uses an annual price so that the rate is constant over the year and does not change for each Shipment, this was because the model was not intended to address the royalty calculation periods. In practice, applying this formulation, the rate will be re-calculated every six months to reflect market prices over that period.
- Reflection should be given to the issue as to whether the Guidelines should address inflationary (or other applicable) increases to the Notional Relevant Metal Value amounts specified in the table. Alternatively, another approach may be to simply amend the table in this Standard from time to time to reflect appropriate price increases in the future.

6. Commercial Production

1. Commercial Production shall commence on the date that recovery, for commercial purposes, of Minerals from the relevant Mining Area has reached at least [60%] of the design capacity outlined in the initial production phase of the Mining Work Plan for that Mining Area for [90] consecutive days.
2. Recovery, for the purposes of Commercial Production, shall take place at the point at which Minerals from the Mining Area are transferred to a vessel directly following collection or removal from the seabed and ocean floor and subsoil thereof.
3. Once ~~the Contractor determines that it is engaging in sustained large-scale~~ recovery operations meet the criteria for the commencement of Commercial Production as set out in paragraph 1 above, which yield a quantity of materials in excess of the thresholds specified in the Standards, the Contractor shall promptly notify the Secretary-General of the proposed date of commencement of Commercial Production together with supporting documentation and other evidence as specified in the Standards.
4. The Secretary-General shall transmit the notification and supporting documentation and evidence to the Commission, which shall consider the proposal and supporting materials and approve or reject the Contractor's proposed date.
5. Promptly following approval or rejection by the Commission, the Secretary-General shall, as applicable, confirm the date of commencement of Commercial Production to the Contractor, or notify the Contractor of the rejection and invite the Contractor to re-submit its proposed date of commencement of Commercial

Production ~~under Regulation 27(2)~~.

6. Upon confirmation, the Secretary-General shall notify members of the Authority, in particular coastal states [in close proximity] [adjacent] to the [Mining Area][~~Contract Area~~], that Commercial Production has ~~commenced~~ ~~begun~~ and the location of the Mining Area(s).
7. The date of commencement of Commercial Production, will be the date confirmed to the Contractor according to ~~paragraph 5. Regulation 27(3)~~.
8. If the Authority [or Inspectorate] has reasonable grounds to believe that the Contractor's recovery rate does not achieve the level defined in their Plan of Work within [6 months] of the start of recovery operations, the Contractor shall be required to modify its Plan of Work in accordance with Regulation 57.
9. The Contractor shall submit any additional information requested by the Authority [or Inspectorate] within [30] days of any such request by the Authority.

Explanation / Comment
<ul style="list-style-type: none">• These changes should be read in conjunction with Regulation 27. In July participants supported the text as drafted. One participant has now proposed deleting the relevant paragraphs from Regulation 27 and moving them to the Standards as set out here, with the changes proposed here in mark-up. <u>I invite comments</u>.• The applicable thresholds provided are placeholders as proposed by one participant. <u>I invite further discussion on this issue</u>.• I note that if the definition of Commercial Production in the Schedule to the Regulations is amended, this text may require consequential harmonization amendments.

7. **[Methodology for the review of Rates of Payments**

1. In line with common practice in cross-country comparisons of fiscal regimes imposed on land-based mining operations, the Commission, when undertaking a review pursuant to this Standard, will use average Effective Tax Rate (AETR) to make comparisons between the rates of payments for deep-sea mining operations and land-based mining operations exploiting similar minerals.
2. In addition, the Commission will draw on established methodology routinely used by intergovernmental organizations conducting such comparisons – for example, the International Monetary Fund's Fiscal Analysis of Resource Industries (FARI) Methodology (see FARI Technical Notes & Manual, 2016).

<p>EFFECTIVE TAX RATE Mining in the Area of deepsea minerals</p> <p><u>ISA Royalty + GovRev</u> Pre-tax net cashflows</p>

within
range

<p>EFFECTIVE TAX RATE Land-based mining of same or similar minerals</p> <p><u>GovRev</u> Pre-tax net cashflows</p> <p>GovRev is all payments to government composed of royalty, income tax, resource rent tax, withholding taxes, and so on, as specified by the fiscal regime.</p>

3. The Commission will use the following information when conducting a review pursuant to this Standard:
 - (a) Pre-tax net cashflows for a typical deep sea mining project;
 - (b) Authority and government revenue from deep-sea mining operations; and
 - (c) Government revenue from land-based mining operations exploiting the same or similar minerals.

Pre-tax net cashflows for a typical deep-sea mining project

4. The ISA Financial Model will be updated based on best available pre-tax net cashflows data for the five years preceding the most recent review of rates of payments.
5. The data referenced in paragraph 4 above will include prefeasibility studies submitted by Contractors as part of their exploitation contract application, feasibility studies submitted 12 months before the commencement of Commercial Production and any annual reporting required during Commercial Production.

Authority and government revenue from deep-sea mining operations

6. Along with royalty payments to the Authority, the Commission shall review the fiscal regimes of governments who either already generate revenue from Commercial Production undertaken by Contractor(s) in the Area or those governments who could generate such revenue in the future if Contractor(s) with existing Exploration contracts were to proceed with Commercial Production. For the purpose of information covered under this paragraph, the Commission will use the median rate of government revenue as the appropriate metric.

Government revenue from land-based mining operations exploiting the same or similar minerals

7. The Commission shall review the fiscal regimes of land-based mining jurisdictions that have accounted for at least 80% of global (excluding seabed mining) production of the same or similar minerals during the preceding five years. For example, when reviewing rates of payment for Contractors who exploit polymetallic nodules, the Commission will review land-based mining jurisdictions accounting for at least 80% of global (excluding seabed mining) nickel, copper, manganese, and cobalt mining production during the preceding five years. For the purpose of the information covered under this paragraph, the Commission will use the median rate of government revenue as the appropriate metric.
8. Subject to the review conducted pursuant to these Standards, if the AETR for mining in the Area is determined to differ from the AETR for land-based mining exploiting the same or similar minerals, the Commission shall propose a recommendation for consideration by the Council to adjust the rates of payments with a view to bringing the AETR for Contractors within the range of AETR for land-based mining operations exploiting the same or similar minerals.]

Explanation / Comment

- Two participants have proposed the above mechanism relating to the review of rates for payments under draft regulation 82. I invite comments.

- The following explanation has been provided by the participants:

The establishment of Standards for the review of the financial terms of exploitation contracts will enable the Authority to simplify the text of the regulations and move rates, deadlines, timelines, and technical considerations, etc. into a set of Standards that can be easily updated.

The establishment of Standards will ensure that there is a consistent, rigorous, transparent, and timely approach to the process by which the Authority will review the system of payments and the rates of payments.

The establishment of a defined review process will also ensure that the Authority can fulfil its mandate to organize and control all mineral-resources-related activities in the Area for the benefit of humankind as a whole.

Also, any review of the system of payments and rates of payments should consider the rates of payments across all financial mechanisms established by the Authority (e.g., potential additional tax, profit share mechanism, financial incentives, etc.) and be aligned with the review of the system of payments and rates of payments.

Finally, the establishment of a transparent review process by the Authority will ensure that member States and Contractors have confidence in the Authority's ability to manage the financial system of the Area for the benefit of humankind as a whole.

Enclosure IV

Draft Guidelines in accordance with Regulations 95 in respect of the administration and management of royalties prescribed in Part VII

Official Listings

1. Official Listing in respect of copper means [appropriate reference to be determined].
2. Official Listing in respect of nickel means [appropriate reference to be determined].
3. Official Listing in respect of cobalt means [appropriate reference to be determined].
4. Official Listing in respect of manganese: [appropriate reference to manganese ore to be determined].
 - ~~(a) — in respect of [electrolytic manganese metal] means [appropriate reference to be determined];~~
 - ~~(b) — in respect of [low carbon ferromanganese] means [appropriate reference to be determined];~~
 - ~~(c) — in respect of [medium carbon ferromanganese] means [appropriate reference to be determined]; and~~
 - ~~(d) — in respect of [high carbon ferromanganese] means [appropriate reference to be determined].~~

Explanation / Comment

- This definition could be moved directly into the Standard if preferred. It has been included here to provide greater flexibility for future changes.
- As identified in the past, manganese presents a challenge. There is currently no accepted market index price because the manganese product, form and value relative to reference prices remain highly uncertain. The new text in relation to manganese reflects the discussions of the OEWG with respect to a medium-grade manganese reference price. This also reflects the new work done by MIT in their updated modelling. I invite further discussion on this point, noting that one participant proposed using only the electrolytic manganese price as the reference price, while another participant proposed eventually moving to a nodule ore price as opposed to a composite based on individual metals prices.

Replacement of Official Listing

If:

1. any of the indices or publications listed as an Official Listing ceases to be published or determinable for a period of [one month] and there are reasonable grounds on which to conclude that the index or publication will continue not to be published on a consistent basis in future; or
2. any of the indices or publications listed as an Official Listing does not, in the opinion of the [Council] fairly and reasonably, whether due to persistent errors or omissions, a change in its methodology or for any other reason, reflect the fair market price of the Relevant Metal,

then the [Council] may determine a replacement Official Listing for the Relevant Metal, which shall be:

- (a) the price for the Relevant Metal quoted on a recognized international mineral exchange or market;

- (b) the published price for the Relevant Metal in a publication recognized for quoting or publishing prices of metals in an international market; or
- (c) based on recommendations of the Commission [and following consultation with Contractors], a formula determined by the Council.

Worked example of royalty calculation

The following provides a worked example of the calculation of the royalty in accordance with regulation 64, appendix IV, the applicable Standard and these applicable Guidelines. This is for illustrative purposes only.

Explanation / Comment
<ul style="list-style-type: none"> • <u>I invite views on whether the worked example should be retained in the Guidelines.</u> The example (currently based on a two-stage variable ad valorem) will need to be updated and refined as changes are made to the proposed drafting, and if required, more detail could be added. For example, it could include changes to the Average Grade rather than the consistency shown in the example below, and adjustment of Shipment sizes and frequency to more closely emulate a typical nodule mining operation. • Pending further discussion with members, the worked example has simply been updated to reflect the rates and thresholds proposed in this text, and does not yet take account of different participants' submissions, including on an additional royalty. • Once the equalization measure has been settled in principle, an updated worked example could be included to encompass the relevant equalization payments.

WORKED EXAMPLE 1:

(see Worked Example 2 for details)	Copper	Nickel	Cobalt	Manganese
	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)	Quantity (DMT) x Average Grade (%) x Average Listed Price (USD/t)
Shipment 1	US\$47,025,000	US\$128,700,000	US\$49,500,000	US\$62,622,000
Shipment 2	US\$57,750,000	US\$169,000,000	US\$62,000,000	US\$67,450,000
Shipment 3	US\$75,625,000	US\$171,600,000	US\$73,700,000	US\$70,290,000
Relevant Metal Value (US\$)	US\$180,400,000	US\$469,300,000	US\$185,200,000	US\$200,362,000
Aggregate Relevant Metal Value (US\$)	US\$1,035,262,000			
Royalty Rate	First Period of Commercial Production	3%		
	Second Period of Commercial Production	Notional Relevant Metal Value	US\$1,035,262,000 / 1,500,000 DMT = US\$690/t	
		11.25%		
Royalty payable (First Period of Commercial Production)	US\$1,035,262,000 x 3% = US\$31,057,860			
Royalty payable (Second Period of Commercial Production)	US\$1,035,262,000 x 11.25% = US\$116,466,975			

WORKED EXAMPLE 2:

1. Calculation of royalty payable (see Appendix IV)

Applicable Royalty Rate multiplied by the Aggregate Relevant Metal Value

$$= \underline{2.3\%} \times \underline{\text{US\$1,591,760,000}} \underline{\text{US\$1,035,262,000}} = \underline{\text{US\$31,835,200}} \underline{\text{US\$31,057,860}}$$

(First Period of Commercial Production) Or

$$= \underline{8.11.25\%} \times \underline{\text{US\$1,591,760,000}} \underline{\text{US\$1,035,262,000}} = \underline{\text{US\$127,340,800}} \underline{\text{US\$116,466,975}}$$

(Second Period of Commercial Production, if two stage variable ad valorem)

2. Applicable Royalty Rate (see Standard)

If during First Period: 2.3%

If during Second Period: 8.11.25% (two stage variable ad valorem)

where 8.11.25% based is on a Notional Relevant Metal Value of ~~US\$1,061/t~~
US\$690/t (as per table in Standard)

Notional Relevant Metal Value

= Aggregate Relevant Metal Value / total Quantity

$$= \underline{\text{US\$1,591,760,000}}$$

$$\underline{\text{US\$1,035,262,000}} /$$

$$1,500,000\text{DMT}$$

$$= \underline{\text{US\$1,061}} \underline{\text{US\$690}} \text{ per ton}$$

3. Aggregate Relevant Metal Value (see Standard)

Aggregate Relevant Metal Value = the aggregate of the Relevant Metal Value for each Relevant Metal during the royalty return period

= Relevant Metal Value for copper + Relevant Metal Value for nickel + Relevant Metal Value for cobalt + Relevant Metal Value for manganese

$$= \text{US\$180,400,000} + \text{US\$469,300,000} +$$

$$\text{US\$185,200,000} + \underline{\text{US\$756,860,000}}$$

$$\underline{\text{US\$200,362,000}}$$

$$= \underline{\text{US\$1,591,760,000}}$$

$$\underline{\text{US\$1,035,262,000}}$$

Relevant Metal Value for Copper:

1. For each Shipment of copper:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
Shipment 1	450000	1.10%	9500	47025000
Shipment 2	500000	1.10%	10500	57750000
Shipment 3	550000	1.10%	12500	75625000
Aggregate for royalty return period				180400000

Relevant Metal Value for Nickel:

1. For each Shipment of nickel:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
Shipment 1	450000	1.30%	22000	128700000
Shipment 2	500000	1.30%	26000	169000000
Shipment 3	550000	1.30%	24000	171600000
Aggregate for royalty return period				469300000

Relevant Metal Value for Cobalt:

1. For each Shipment of cobalt:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
Shipment 1	450000	0.20%	55000	49500000
Shipment 2	500000	0.20%	62000	62000000
Shipment 3	550000	0.20%	67000	73700000
Aggregate for royalty return period				185200000

Relevant Metal Value for Manganese:

1. For each Shipment of manganese:

Quantity x Average Grade of the Relevant Metal x Average Listed Price for the Relevant Metal

2. For the royalty return period:

the aggregate of the Relevant Metal Values for each Shipment which commenced loading in the royalty return period

3. Therefore, assuming 3 Shipments:

NOTE: Price based on the following:

(0.1 x EMM Price) + (0.1 x LC FeMn Price) + (0.1 x MC FeMn Price) + (0.1 x HC FeMn Price)

	Quantity (DMT)	Average Grade (%)	Average Listed Price (US\$/t)	Relevant Metal Value (US\$)
Shipment 1	450000	28.40%	1500 <u>490</u>	191700000 <u>62622000</u>
Shipment 2	500000	28.40%	2000 <u>475</u>	284000000 <u>67450000</u>
Shipment 3	550000	28.40%	1800 <u>450</u>	281160000 <u>70290000</u>
Aggregate for royalty return period				756860000 <u>200362000</u>

Enclosure V

Schedule of relevant definitions

Explanation / Comment

- During the March 2023 meetings and in various written submissions participants have raised that certain terms or concepts require definitions, or that existing definitions should be amended or updated. Proposed new definitions are included in this Schedule. I invite further discussion and text proposals on all of these, and any additional definitions or amendments to existing definitions which participants consider may be relevant to the text being considered by the OEWG.
- Further definitions have been added based on the new text proposed for the equalization measure (see regulations 64Bis to 64Qui). I invite comments on these. If there is broad support for the proposal reflected in the text of DR 64Bis to DR 64Qui, I would propose that certain definitions are moved into Appendix IV and the relevant Standards.
- I note that once draft text for the various Regulations is settled, the text of the definitions may require consequential harmonization amendments, and the use of the defined terms in the Regulations may need to be capitalised.
- If the participants agree to including these terms, the Schedule in the President's Text will be updated accordingly for the next meeting.

["Additional Royalty" means the additional royalty payable in accordance with regulation [64Bis] and [64Ter].]

["Allowable Sponsoring State Tax" has the meaning given in regulation [64Ter.6].]

["Applicable Additional Royalty Rate" is the rate determined in the [applicable] Standard.]

["Assumed CIT Rate" is the rate determined in the [applicable] Standard.]

["Certified Laboratory" means a laboratory certified to undertake a chemical analysis of mineral-bearing ore in accordance with the relevant standards of the International Organization for Standardization and which otherwise complies with the requirements for a Certified Laboratory in Standards and Guidelines.]

["Covered Taxes" has the meaning given to that term in the [Pillar 2 Global Anti-Base Erosion Model Rules published by the OECD] from time to time.]

["Eligible Royalty Payments" has the meaning given in regulation [64Qua.7].]

["Eligible Tax Payments" has the meaning given in regulation [64Qua.8].]

["Equalization Measure Audit" means an audit in respect of a Contractor carried out in accordance with the relevant Standard and applicable Guidelines to determine whether the Contractor has any Tax Exemptions or receives any Subsidies from its Sponsoring State.]

["financial incentive" means [a financial grant or reduction of amounts otherwise payable to the Authority which otherwise complies with the requirements for financial incentives in these Regulations and in Standards and Guidelines.]

["force majeure" means [...].]

["Inclusion Criteria" means [a substantial (but not necessarily the majority or primary) part of (i) its business is connected to or associated with, and/or (ii) its revenues are derived from, mining, harvesting, transporting, processing and/or sale of Minerals or Metals obtained under an exploitation contract].]

["Income" has the meaning given to 'GloBE Income' in the [Pillar 2 Global Anti-Base Erosion Model Rules published by the OECD] from time to time.]

["Independent Auditor"] means [an auditor appointed by [...] to conduct an audit in respect of a Contractor and/or its Related Entities in accordance with the relevant Standards and applicable Guidelines].

["large scale production"] means exploitation, production or removal from the Area of mineral-bearing ore in a quantity which is in excess of the thresholds specified in the Standards.

["mineral-bearing ore"] means [...].

["monopolize"] means the ability to control over 75 per cent of the estimated annual volume of similar mineral-bearing ore exploited, produced or removed from the Area after Commercial Production has occurred in respect of at least two exploitation contracts.

["Profits"] has the meaning given in regulation [64Qua.5].

["Profit Share Audit"] means an audit in respect of a Contractor carried out in accordance with the relevant Standard and applicable Guidelines to verify a Top-up Profit Share Return and related Top-up Profit Share Payment.

["Related Entities"] means, in respect of a Contractor, [the 'Group Entities' that are part of the same 'Group' as the Contractor, where 'Group Entity' and 'Group' have the meanings given to those terms in the [Pillar 2 Global Anti-Base Erosion Model Rules published by the OECD] from time to time].

["related parties"] means parties that belong to the same corporate structure, such as a parent and subsidiary company, or sister companies which are both subsidiaries of the same parent company, and a state enterprise shall be considered a "related party" vis-à-vis its host State party or a contractor sponsored by its host State party unless evidence is provided that any costs, prices and revenues have been charged or determined on an arm's-length basis.

["Relevant Activities"] means [all activities and business operations which are connected or associated with the mining, harvesting, transporting, processing and/or sale of Minerals or Metals obtained under an exploitation contract].

["Subsidies"] means [...].

["sustained large-scale recovery operations"] means the exploitation, production or removal from the Area of mineral-bearing ore in a systematic manner over a minimum period specified in the Standards and which constitutes large-scale production.

["Suitably Qualified Person"] means a person qualified to conduct a valuation of mineral-bearing ore in accordance with the relevant standards of the International Organization for Standardization and who otherwise complies with the requirements for a Suitably Qualified Person in Standards and Guidelines.

["Tax Exemptions"] means [any reductions in or exemptions or relief from generally applicable tax which would have otherwise been applicable to a Contractor].

["Top-up Profit Share Payment"] means the top-up profit share payment payable in accordance with regulation [64Bis] and [64Qua].

["Top-up Profit Share Return"] means a return in relation to a Top-up Profit Share Payment in the form and with the content prescribed by the relevant Standards and taking into account the Guidelines.

["Total Eligible Payments"] has the meaning given in regulation [64Qua.6].

["Transferee"] means an entity to which a Contractor may transfer, or has transferred, its rights and obligations under an exploitation contract in accordance with Regulation 23.

["Transfer Profit Share"] means [...].