Annex I: Outcomes of discussions on placement hierarchy criteria

Regulations

With reference to the seabed minerals exploitation activities the regulations should be the *rules and administrative codes which will be issued by the Authority to its contractors ensuring activities within the ambit of UNCLOS. It should have following characteristics:*

- Implement the Convention and Agreement in legally binding and enforceable terms.
- Be substantive provisions (i.e. rules).
- Set high-level of obligations addressing non-negotiable issues that must be applied equally to all contractors/applicable in a non-discriminatory manner
- Such obligations should be expressed without too much prescriptive detail, but should be detailed enough to specific the legal obligation (i.e. high-level doesn't mean 'vague' - needs to be no leeway for misinterpretation, but too much detail in regulations detracts from the importance of key high-level requirements in each provision)
- Certain provisions (rules) might be expressed at a high level in the body of the regulations, and then the detail is set out in an annex.
- General obligations that have the ability to work as a foundation for more detailed information through Annex, Standard or Guidelines.
- Amendments are possible but expected only infrequently / exceptionally. - Onerous process: adopted by Council, and approved by Assembly. Also requires broad Stakeholder consultation.

Examples of types of regulations:

- Establish the powers, rights and responsibilities of relevant actors.
- Set objectives for the ISA.
- Mandates the making of subsidiary instruments e.g. Standards.
- Establish foundational requirements for e.g. environmental review processes

Annexes

- The annexes should always be supplementary to a substantive provision (rule) in the body of the regulations
- They should provide additional detailed information i.e. if material meeting the criteria for including in the body of the regulations additionally includes lengthy text, more detailed technical, scientific, administrative or procedural material, tables or long lists, then this content should be moved to annexes. *Note: Some very technical issues should be in Standards however (see Standards criteria).*
- Legally binding,
- Not meant to be changed frequently, same as body of the regulations.

Standards

- Implement the Regulations.
- Made under (and cannot exceed) the power given by the Regulations.
- Contain legally binding and enforceable requirements.
- Cover non-negotiable issues that must be applied equally to all contractors.
- Provide more prescriptive detail for high-level requirements than the Regulations.
- It is used to establish the technical detail, allowing the legislation to concentrate on long term policy objectives of the relevant regulation.
- Should be more regularly updated than the Regulations, to cover issues that may change over time. Subject to periodic review (more frequent than regulations) and adjustment as new knowledge obtained. Moderately onerous process: Adopted by LTC, approved by Council. Also requires expert and Stakeholder input.
- Should be defined in the Regulations as part of the 'Rules, regulations and procedures' of the Authority (as empowered by Annex III, Art 17 which specifies that RRPS shall include 'mining standards and practices, including those relating to… protection of the marine environment'.)

This is important so that violation of a Standard has the same repercussion as violation of the contract or Regulations.

Standards may, for example:
- Set mandatory steps and/or provide additional specificity towards achieving the objectives in the Regulations.
- Cover issues that may change over time.
- Establish specific minimum performance standards or thresholds.
- Focus on result / outcomes, and may also address methodology, e.g. with regards reporting requirements: where the ISA needs to receive information in a consistent and standardised way from all contractors.
- Provide pre-determined criteria for a given situation/ phenomenon.
- Be prepared to achieve an optimum degree of order in a given context in implementing the regulations.

Additional note: Standards need to be categorised into phases, with phase 1 (needed in place at time of adoption of the Regulations) being highest priority for Council at this stage. These lists should be revisited based on developments in the negotiations.

Specific to EIA/EIS: Include elements in Standards which are critical to include, and where prescription is required on specific order/format of report/results, as well as technical requirements. But should consider avoiding being so prescriptive in binding Standards that innovation and efficiency of EIS presentation on case-by-case basis risks being stunted.

Guidelines

- Non-binding and recommendatory in nature.
- Describe *how* a mandatory requirement may be achieved - provide an interpretative guide to the Regulations or a Standard i.e. directives towards achieving compliance, mandatory requirements and adopting best practices.
- Can be and should regularly updated: flexible, adaptive, responsive to keep in line with current best-practice and new information.
- Not defined as 'Rules, regulations and procedures' of the Authority in the Regulations.
- No repercussions for failure to adhere to a Guideline, though if
- adhered to provide indication to contractors and ISA that BEP, GIP, and/or BAT are being met.

Guidelines may, for example:
- Recommend (but not require) practices or procedures (for standardisation purposes), or sign-post to external useful resources / standards.
- Focus on compliance promotion, and dissemination of best practices.
- Two types of Guidelines in drafting terms:
  - Summary Guideline: To summarise and/or describe and explain requirements: i.e. 'there is a **rule** for X to lodge an application and here is a summary of required documents for such application'. This Guideline would bring together in one place all the **requirements** (e.g. from Regs, Annex and Standards) to explain coherently and Guide the reader to apply these rules. It would be 'explaining' not 'adding' anything.
  - Recommendatory Guidelines: To guide best-practice for complying with a requirement: i.e. 'when lodging X plan under an application, which requires you to do X, it is recommended that it contains/is developed by doing Y (can direct to external sources of best-practice for example)'. This is adding information of how to comply with a requirement.

Other notes:
- Least onerous process: Adopted by the LTC or Secretariat (after Stakeholder consultation, with technical expert input also recommended), and reported to Council for noting. Upon consideration, the Council could direct that Guideline to be modified or withdrawn.
- Lower priority for ISA at this stage.
- If these criteria are accepted then wording within the regs should to follow this formula (or similar):
- 'must do [x] in accordance with the relevant Standards.'
- 'must do [x] taking into account the relevant Guidelines'.