

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART III**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

- 1. Name of Working Group:** ENVIRONMENT
- 2. Name(s) of Delegation(s) making the proposal:** The Kingdom of Denmark, Ireland, Federated States of Micronesia and Portugal
- 3. Please indicate the relevant provision to which the textual proposal refers.**
New provision regarding consultations with coastal States: Regulation 93ter
- 4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.**

Proposed changes **highlighted in blue**

Regulation 93 ter

Consultations with coastal States

1. Targeted and proactive consultation with adjacent coastal States and any other **coastal States adjacent to the areas of a planned activity when they are** potentially most affected coastal States, shall take place at different stages of a plan of work, when documents are being developed and at other appropriate times during and at cessation of exploitation activities, in particular at the development of:

- (a) Environmental Plans;
- (b) Any review/update of the environmental plans in light of Material Change;
- (c) Performance Assessment; **and/or**
- (d) Closure Plans.

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

- (a) Adjacent coastal States and any other coastal States **adjacent to the areas of a planned activity** whose exercise of sovereign rights for the purpose of exploring, conserving or

managing natural resources may reasonably be affected by the activity;

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

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

3. As appropriate, the Secretariat, Contractor, Sponsoring State and/or other States or relevant bodies should assist developing States, including small islands developing States, upon request, to identify potential effects of the planned activity on areas under their jurisdiction.

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

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

(b) The Secretary-General notifies all States, via Note Verbal, that a plan of work is being prepared for the area to be covered by a plan of work "X" and requests them to communicate, within ~~1.~~30 days, whether they meet the criteria for potentially most affected coastal States;

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

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

(e) The Contractor must then undertake targeted and proactive consultations with the coastal States in question ~~to be further developed in a standard/guideline~~, which may address inter alia the following issues: (i) the provision of access to information to the coastal States in question relating to the environmental impacts of the planed activity; (ii) consideration of the views and comments of the coastal States in question; (iii) provision of written responses specifically addressing such views and comments, in particular with respect to potential impacts in

areas under national jurisdiction; (iv) revision of the planned activity, if appropriate].

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

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

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

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

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

6. Procedures for consultations with coastal states shall be further developed in a Standard/Guideline.

5. Please indicate the rationale for the proposal. [150-word limit]

Further to the presentation by the Kingdom of Denmark, on behalf of Portugal, of the proposal on consultation with coastal States during the third part of the 28th Session of the Council, at the WK Environment, and to the comments and support that it has received from other delegations, the present submission is a joint submission by the Kingdom of Denmark, Federated States of Micronesia, Ireland and Portugal.

1. Our legal reading of UNCLOS, including Article 142, suggests that consultations of coastal States cannot be governed by an overarching rule for stakeholder consultations. Coastal States not only have certain rights and interests, but also have obligations by virtue of their geographic location. These special circumstances are recognized by UNCLOS, which accordingly affords coastal States specific prerogatives, including in terms of consultation, as reflected in Article 142.
2. Article 142(2) requires consultations with the coastal State when the resource deposit in the Area lies across limits of its national jurisdiction. This provision aims to ensure that the sovereign rights of the coastal State over the mineral resources in question are respected by providing the coastal State with the opportunity and the ability to participate in the process.

3. UNCLOS, however, does not provide a similar explicit mechanism for the purposes of operationalizing Article 142(3) according to which, coastal States must be able to exercise their rights to:

[...] take such measures consistent with the relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area.

4. Article 142(3) does not provide for a consultation mechanism aimed at facilitating the exercise of such rights. **However**, we believe that – when a mining activity in the Area is being planned – such a consultation mechanism will be essential to ensure that coastal States can meet their obligations and uphold their rights to take such measures, consistent with Part XII of UNCLOS, to prevent, mitigate or eliminate grave and imminent danger resulting from or caused by activities in the Area to a wide range of their interests.
5. **Moreover**, in cases where the planned activity affects or may potentially affect areas within national jurisdiction, such a mechanism is likewise instrumental to allow the concerned coastal State(s) to fully exercise their sovereign rights for the purpose of exploring and exploiting, conserving, and managing of natural resources, as well as their jurisdiction with regard to the protection and preservation of the marine environment, in the areas within their national jurisdiction, as set out in article 56(1)(a) and (b) of UNCLOS.
6. This is the rationale behind the BBNJ Agreement Article 32(1), which states:

Parties shall ensure the timely public notification of a planned activity [...], and planned and effective, time-bound opportunities [...] for participation of all States, in particular adjacent coastal States and any other States adjacent to the activity when they are potentially most affected States [...].”

7. With this legal framework in mind and with the BBNJ Agreement as reference, the joint proposal addresses consultation with adjacent coastal States and any other potentially most affected States.
8. This proposal covers:
 - A Process for targeted and proactive consultations with “adjacent coastal States and any other potentially most affected coastal States”. Terminology also used in the BBNJ Agreement. Consultations should take place at different

stages of the plan of work, including when documents are being developed. The process is further developed in paragraph 4.

- The proposal also contains provisions for determining the potentially most affected coastal State (paragraph 2), which is for the coastal State to determine, not the contractor or the Authority.
- The proposal also regulates the situation where the planned activity includes resources that lie across the limits of national jurisdiction, in paragraph 5.
- Furthermore, the proposal entails that the Secretariat, Contractor, Sponsoring State and/or other States or relevant bodies, as appropriate, should assist developing States including small island developing States, upon request, to identify potential effects of the planned activity on areas under national jurisdiction (paragraph 3).