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Draft regulations on exploitation of Mineral resources in the Area

Revised Consolidated Text

Preamble

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

The objective of these Regulations is therefore to regulate the Exploitation of the [mineral] resources of the Area consistent with the Convention, including the duty [to take necessary measures in accordance with the Convention] to ensure effective Protection [of] the Marine Environment from [harmful effects] [Serious Harm] caused by those activities [as well as the duty to protect and preserve underwater cultural heritage found in the Area for the benefit of humankind as a whole].

[The Authority acknowledges the current uncertainties and limited knowledge about deep ocean ecosystems and the potential effects of activities in the Area and the need to revise these regulations in light of advancements in scientific knowledge.]

Co-facilitators’ Comment (new, for Rev. 2): In response to feedback from a Member that does not view the Regulations as having the protection/preservation of UCH as a core element (alongside the core elements of managing Exploitation activities and protecting the Marine Environment from harm from such activities), we have placed the preambular language on UCH in brackets.

Co-facilitators’ Comment (old, for Rev. 1): The comprehensive set of draft textual proposals from the UCH IWG to the Council in late 2024 had extensive preambular paragraphs focusing on, e.g., Ocean

¹ Reissued due to formatting adjustments.

stewardship, the need to safeguard UCH, and the rights of Indigenous Peoples. However, the current trend in the negotiations for the preamble is to not have preambular paragraphs in that manner, but to instead (as above) have two or three general paragraphs that focus on UNCLOS and the Part XI Agreement, as well as perhaps some language on the protection of the marine environment and on gaps in existing scientific knowledge about the Area. The co-facilitators therefore recommend deleting the preambular paragraphs previously proposed in the original comprehensive set of draft textual proposals on UCH and moving at least some of the elements from the UCH draft text into DR 2, on principles, approaches, and policies; as well as in DR 4bis, if the current trend in the negotiations persists. We also propose inserting a general reference to protecting and preserving UCH found in the Area in the preamble above, to retain some reference to UCH in the preamble.

Part I

Introduction

Regulation 2

Principles, approaches and policies

[. . .]

[4. The following principles and approaches shall guide the application of these Regulations]:

(h) The use of relevant traditional knowledge of Indigenous Peoples and local communities where available.]

[. . .]

[7bis. Nothing in these Regulations shall be construed as diminishing or extinguishing the existing rights of Indigenous Peoples, including as set out in the United Nations Declaration on the Rights of Indigenous Peoples, or of, as appropriate, local communities.]

Co-facilitators' Comment (new, for Rev. 2): No change from Rev. 1. We also note that the notion of “traditional knowledge of Indigenous Peoples and local communities” could be expansive enough to cover what is sometimes called “pure intangible [underwater] cultural heritage”, especially as we do not plan to suggest a definition for traditional knowledge in these Regulations.

Co-facilitators' Comment (old, for Rev. 1): We propose supporting the language in green above from the President's revised consolidated text.

We also propose inserting a new paragraph 7bis in this DR 2 on the rights of Indigenous Peoples and of local communities, drawing from language previously proposed for the preamble and also as reflected in the BBNJ Agreement. There is currently no other provision in this document that explicitly recognizes such rights, which is a key ask of some IWG participants. However, recognizing some concerns raised about such language by other IWG participants, we are putting this language in brackets for now.

We also note our proposal to insert language on UCH in the preamble above, which is meant to replace some of the original language in 7bis/7ter from the October 2024 comprehensive set of draft textual proposals on UCH.

[...]

Regulation 4bis

Protection and Safeguarding of Underwater Cultural Heritage and human remains

1. Exploitation activities in the Area shall be conducted in a way that does not [adversely] affect underwater cultural heritage and shall avoid the [unnecessary] disturbance of human remains or venerated sites.
2. Underwater cultural heritage shall be protected and preserved for the benefit of humankind as a whole, in accordance with articles 149 and 303 of the Convention.
3. Proper respect shall be given to all human remains in the Area.
4. [In carrying out its responsibility to protect and safeguard Underwater Cultural Heritage, the Council may establish an Advisory Board on Underwater Cultural Heritage composed of xx experts, with the participation of Indigenous Peoples and of local communities, as appropriate. The Advisory Board shall assist the Council on all matters relating to Underwater Cultural Heritage under these Regulations, advise the Legal and Technical Commission on relevant issues, and liaise with relevant Stakeholders, including Indigenous Peoples and local communities, as appropriate.]

Co-facilitators' Comment (new, for Rev. 2): We have introduced a reference to human remains in the title of the DR, in order to be comprehensive, per a suggestion from an IWG Member. We have also included the verb of “protected” in the second paragraph to be in alignment with the title of the DR and the relevant provisions of UNCLOS referenced in the paragraph. Finally, we have inserted a new paragraph 4 that would signal that the Council could establish an Advisory Board on Underwater Cultural Heritage to, e.g., make recommendations on UCH matters. This would be an alternative to the UCH Committee previously proposed for DR4 ter (which we retain as the other alternative). It is our effort to include language on some version of a new entity to assist on UCH matters without the heavily prescriptive text in the original DR4ter, given some opposition expressed to that original DR4ter by some UCH IWG Members. We have kept the new paragraph 4 in brackets, given diversities of views in the IWG on the matter. We have also left open for now the question of who would nominate/elect/select the experts/members of this new Advisory Board, which we think should be resolved as part of a broader discussion on whether there should be a new Board/entity at all.

We have also received feedback that opposes the use of the phrase “Underwater Cultural Heritage” throughout the entire Rev. 2, in part because such a phrase is more properly regulated under one or more other instruments (e.g., the 2001 UNESCO Convention on UCH) rather than by UNCLOS and its 1994 Agreement. The feedback also stresses a preference for using the language in articles 149 and 303 of UNCLOS instead, namely, “archaeological and historical objects” found at sea / in the Area. We invite the IWG to consider this matter more closely. We have refrained from bracketing the phrase “Underwater Cultural Heritage” or inserting the UNCLOS language above in this Rev. 2, but this is without prejudice to the possibility of the IWG considering these suggestions anyway. The same feedback also noted that if “archaeological and historical objects” is used as a term of art in place of “Underwater Cultural Heritage,” then the current definition of UCH in the Schedule could be modified to be the definition for “archaeological and historical objects”. We invite Members to consider this matter going forward.

Co-facilitators' Comment (old, for Rev. 1): We have reintroduced DR 4bis on the protection and safeguarding of UCH from the original comprehensive set of draft textual proposals on UCH, but with some modifications to broaden the scope of the obligation in paragraph 1 (beyond just the Authority, Contractors, and States) and include references to relevant articles of the Convention. We also removed previous language on the Plan of Work because that element is captured in other DRs dealing with the steps involved for developing and assessing Plans of Work.

[Regulation 4ter [alt to DR 4bis(4)]

Committee on Underwater Cultural Heritage

1. A Committee on Underwater Cultural Heritage ("the Committee") [is hereby][will be] established to assist the [Council][Legal and Technical Commission] in carrying out its responsibility to protect and safeguard Underwater Cultural Heritage
2. The Committee shall comprise xx members serving in their expert capacity and [elected][selected] by the [Assembly][Council][Legal and Technical Commission]. Members shall include, among others, at least one representative of Indigenous Peoples from each of the seven United Nations-recognized Indigenous socio-cultural regions.

2alt. The Committee shall comprise xx members elected by the Assembly. Members shall be Members of the Authority. The Committee shall be regionally balanced and include experts that have appropriate qualifications for the various fields of expertise needed, such as international law experts, archeologist, archeological surveyor, historian, or relevant traditional knowledge of Indigenous Peoples and of local communities. The Committee shall include an observer from the Secretariat of the UNESCO.

3. Without limiting the powers and functions conferred upon another organ of the Authority the Committee shall:
 - a. Provide recommendations to the Council on matters relating to Underwater Cultural Heritage
 - b. Advise the Legal and Technical Commission on all matters relating to Underwater Cultural Heritage
 - c. Liaise with Indigenous Peoples, local communities, and other relevant Stakeholders
 - d. Perform any other duties that the [Council][Legal and Technical Commission] directs in writing
 - e. Provide recommendations to the Assembly in its development of general policies of the Authority relating to Underwater Cultural Heritage
 - f. Make recommendations [and take decisions] as provided in these Regulations
 - g. Make recommendations [and take decisions] as to the identification of Stakeholders, including Indigenous Peoples and local communities
 - h. Make recommendations with respect to the use of the relevant traditional knowledge of Indigenous Peoples and of local communities, where available
4. The Committee shall develop its own rules of procedure, which shall be approved by the Council.
5. [Decisions of the Committee shall be taken by consensus. If all efforts to achieve consensus have been exhausted, decisions shall be taken by a majority of members present and voting. In the case of a tie, the Chair of the Committee shall have the decisive vote.]
6. The Committee shall meet at regular intervals preferably using virtual means.
7. The Secretary-General shall provide such administrative support to the Committee as is required.]

Co-facilitators' Comment (new, for Rev. 2): We have retained the previous version of DR4ter, given that some IWG Members have expressed some degree of support for the creation of a UCH

Committee. We have revised the previous version of DR4ter to incorporate some edits suggested by some IWG Members, including an alternative para 2 on the composition of the Committee. We have kept the DR in brackets, given diversities of views in the IWG on the matter. This version of DR4ter is to be viewed as an alt to the newly-proposed DR4bis(4) above, with the proviso that both texts remain fully in brackets.

Co-facilitators' Comment (old, for Rev. 1): We have reinserted the previous proposal for a UCH Committee. In this iteration, we have amended the proposal slightly to reflect alternative and bracketed choices between the Assembly, Council, and LTC as being the body that elects or selects the member of the Committee, given divergent views in the Council as to what body has direct authority over similar entities. We have also inserted language on how the membership of the Committee should include at least seven representatives of Indigenous Peoples, one from each of the seven UN-recognized Indigenous socio-cultural regions of the world (similar to the approach taken under, e.g., the UNFCCC). We have removed language on majority membership for now, pending further discussion.

It is also our view that, in light of continued divergences in the UCH IWG on this matter, the UCH Committee should essentially be an expert advisory group that provides recommendations to the relevant entities in the ISA, rather than an intergovernmental decision-making body. However, we also recognize the interest of some UCH IWG participants in having this committee be a decision-making one, so we have inserted brackets around the provisions in the DR that pertain to decision-making by the Committee.

And, finally, recognizing divergent views in the IWG, we have placed the entire DR in brackets for the time being.

Part II

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

[. . .]

Section 3

Consideration of applications by the Commission

[. . .]

Regulation 13

Assessment of applicants and application

[. . .]

9. In considering whether an application provides for effective Protection of the Marine Environment, the Commission shall determine:

[. . .]

(d) Whether the Plan of Work ensures effective Protection of the Marine Environment, in accordance with all applicable environmental requirements in the Convention, Agreement, and the rules, regulations and procedures of the Authority, taking into account:

[. . .]

(vii) Traditional knowledge or cultural interests relevant to the Protection of the Marine Environment, where available;

[...]

10. In determining whether an application provides for the protection of cultural rights or interests, and taking into account the recommendations of the [Advisory Board on Underwater Cultural Heritage][Committee on Underwater Cultural Heritage], the Commission shall [determine whether the application]:

(a) [] Adequately identifies such cultural rights or interests; and

(b) Demonstrates that the Plan of Work will not interfere with any cultural rights or interests;

(b alt) Has considered relevant traditional knowledge of Indigenous Peoples and local communities where available or other cultural rights or interests

Co-facilitators' Comment (new, for Rev. 2): Per a suggestion, we have inserted the qualifier of “where available” in paragraph 9(d)(vii), as such knowledge and cultural interests might not be universally available. We have inserted new language in paragraph 10 on the role of the AB on UCH / the UCH Committee. We note comments made in the IWG about the propriety of the language on cultural rights. We have retained that language here untouched because it is currently unbracketed in the Council President’s revised consolidated text, but we invite the IWG to consider this matter further.

Co-facilitators' Comment (old, for Rev. 1): We propose working on the basis of paragraph 10 above to insert the text in blue rather than (as in the IWG’s October 2024 proposal) inserting a separate paragraph 10bis to address the matters in blue. We would keep paragraph b alt because there were differences of views in the IWG on the matter. We also propose expressing support for the existing text in green in paragraph 9(d)(vii) above.

[...]

Regulation 15

Commission’s recommendation for the approval or disapproval of a Plan of Work

[...]

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

[...]

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

[...]

[(vii bis) Any other area identified [by the Council][by the Authority] for preservation for reasons of special biological, scientific, archaeological, historic, cultural, aesthetic or wilderness significance.]

[...]

Co-facilitators' Comment (new, for Rev. 2): In response to a couple of suggestions from the IWG, we have presented two alternative texts in brackets here as to what entity would identify the area referenced in paragraph vii bis. We invite Members to discuss this issue of the identifying entity as well as what the steps should be for that identification process. We have also put that entire paragraph in brackets because of a

concern raised by an IWG Member that the relationship between the paragraph and UCH is not clear, and the paragraph should either be revised to more closely connect to UCH or be deleted entirely.

Co-facilitators' Comment (old, for Rev. 1): We propose inserting the text for paragraph 2(b)(vii bis) referenced above, which was dropped from the President's text. We have also opted for "identified" rather than designated" in order to accommodate the broadest range possible of sites/notifications/etc.

Part III

Rights and Obligations of Contractors

[...]

Section 2

Matters relating to production

[...]

Regulation 28

Maintaining Commercial Production

[...]

Co-facilitators' Comment (new, for Rev. 2): No change from Rev. 1.

Co-facilitators' Comment (old, for Rev. 1): We recommend supporting this deletion. In the original comprehensive set of draft textual proposals on UCH from October 2024, the document inserted text in this paragraph regarding notification, reduction, and suspension requirements when encountering human remains and UCH. However, we now think this sort of language is best addressed in DR 35/35alt below.

[...]

Section 5

Emergency Response and Contingency Plan, Incidents and Notifiable Events

[...]

Spain Proposal June 2025 DR35 –

Human remains and underwater cultural heritage

1. Exploitation activities in the Area shall be conducted in a way that does not negatively affect human remains and/or underwater cultural heritage.

2. The Contractor shall notify the Secretary-General in writing within 48 hours the finding in the Contract Area of any human remains and/or underwater cultural heritage, and its location, including the preservation and protection measures taken. The Contractor shall immediately cease exploitation activities within a 200 meters radius of the finding.

3. The Secretary-General shall transmit such information in writing, within two (2) days of receiving it to all member States, the President of the Council, the Director General of the United Nations Educational, Scientific and Cultural Organization (UNESCO), to any other competent international organization and to any other competent observer.

4. Within ten (10) days of the notification of the discovery by the Secretary-General, any member State may declare to the President of the Council its interest in being consulted on how to ensure the effective protection of the human remains and/or underwater cultural heritage found in the Area. The sponsoring State shall always be considered one of these interested States. Competent organizations and observers shall have the same length of time to notify the Secretary-General their interest in being consulted.

5. After ascertaining the views of member States, particularly those with preferential rights under Article 149 of the Convention, within ninety (90) days of the notification of the discovery by the Secretary-General, the Council shall make a decision as to whether or not exploitation activities shall be terminated within an area surrounding the discovered human remains and/or underwater cultural heritage. The Council may suggest to the Member States any measure to preserve the human remains and/or underwater cultural heritage in their archaeological and natural context, for the benefit of humankind as a whole. In adopting its decisions, the Council shall take into account the views of the United Nations Educational, Scientific and Cultural Organization and other competent organizations. The Council may also take into account the views of other competent observers.

6. No activity directed at, or incidentally affecting, sunken State vessels and aircraft shall be undertaken or authorised without the consent of the flag State.

7. Any measure decided under this regulation shall be adopted or suggested in accordance with applicable standards and taking into consideration adopted guidelines.

8. The Contractor shall not be entitled to compensation for any measure required in this regulation.

9. The Council shall forward to the Seabed Mining Register all information, except for confidential information, used in making its decision under paragraph 5 of this regulation.

Co-facilitators' Comment (new, for Rev. 2): We have deleted DR35alt and retained Spain's latest proposal for DR35 as the basis for the IWG's discussions on DR35 going forward, given the general support expressed in the most recent virtual meetings of the IWG to do so. We have not altered Spain's proposal, mainly because we would like to provide Spain the opportunity to present their proposal to the IWG (if not the broader Council) prior to taking on board suggested edits (if any) for the proposal.

Co-facilitators' Comment (old, for Rev. 1): We have reinserted DR 35alt above as previously contained in the original comprehensive set of draft textual proposals on UCH from last October, without any alterations from us. We think that the IWG needs to have a focused discussion on this DR before we are comfortable with proposing additional edits to it. We have, however, removed the original DR 35, choosing instead to work on the basis of this DR 35alt.

We have also, at the request of Spain, inserted above a copy of Spain's most recent textual proposal for DR 35. We will invite the UCH IWG to consider both DR 35alt and Spain's most recent proposals for DR 35 going forward, with a view to harmonizing/consolidating/streamlining them to the extent possible.

We also wish to note that it will be beneficial for the IWG to have a clear idea as to whether the exploitation regulations should focus on handling tangible/concrete/physical examples of UCH, including as referenced in the Convention (e.g., sites and objects of an archaeological or historical nature), while leaving the issue of intangible UCH to be further fleshed out at a later time (e.g., through the recommendations of the UCH Committee, as above); or whether the regulations should, on their face, address both tangible and intangible types of UCH. We also note that there are already references to traditional knowledge of Indigenous Peoples and of local communities in the draft exploitation regulations, which could form the basis for recognizing intangible UCH and operationalizing that element at a later time.

Finally, an interest has been expressed to refer in DR 35 to special measures of protection for historic wrecks that pose threats to the marine environment (i.e., “potentially polluting wrecks”) in order to eliminate the risk of serious pollution Incidents arising from such wrecks. We will invite the IWG to discuss such a provision going forward.

[. . .]

Part IV

Protection and Preservation of the Marine Environment

Section 1

Obligations relating to the Marine Environment

Regulation 44

General Obligations

1. The Authority, Sponsoring States, the Enterprise, Contractors, flag States and port States [and the States of registry] shall take necessary measures to ensure effective Protection of the Marine Environment from harmful effects which may arise from the Exploitation, in accordance with Regulations as well as applicable Standards and [the relevant Regional Environmental Management Plan], taking into consideration the Guidelines referred to in Regulation 45 and to this end shall:

[. . .]

(c) ter Use relevant traditional knowledge of Indigenous Peoples and of local communities in decision-making, where available;

Co-facilitators’ Comment (new, for Rev. 2): No change from Rev. 1.

Co-facilitators’ Comment (old, for Rev. 1): We recommend supporting this text in paragraph 1(c ter), in line with the original comprehensive set of draft textual proposals on UCH from October 2024.

[. . .]

Section 2

The Environmental Impact Assessment Process

Regulation 46

The Impact Assessment Process

[. . .]

3. The [process for Environmental Impact Assessment][] shall:

[. . .]

(b) bis Be based on the Best Available [Science and] Scientific Information and, [where available,] relevant traditional knowledge of Indigenous Peoples and [of] local communities;

[. . .]

(c) bis Include an underwater survey to identify Underwater Cultural Heritage that are located in or otherwise associated with the areas of the proposed Exploitation activities;

Co-facilitators' Comment (new, for Rev. 2): We have deleted the reference to human remains, given the suggestion for this in recent virtual meetings of the UCH. We note that human remains are still covered under DR4bis and DR35. We also note a suggestion that sub-paragraph (c) bis could be moved to or otherwise covered in DR47 (on the EIA itself) rather than in this broader DR on the impact assessment process as a whole. We leave it here for now and invite Members to consider the matter further.

Co-facilitators' Comment (old, for Rev. 1): We recommend supporting the text in paragraph 3(b bis), in line with the original comprehensive set of draft textual proposals on UCH from October 2024. We also recommend inserting the text in paragraph 3(c bis) above, which was proposed in the same October 2024 submission.

We also suggest putting the reference to human remains in brackets for now, as there are divergences of views in the UCH IWG as to whether it is appropriate to reference human remains in the context of underwater surveys here. This is a cross-cutting issue that we would like the IWG to discuss more deeply going forward.

[. . .]

Regulation 47

Environmental Impact Assessment

1. The applicant or Contractor shall, in accordance with the Standards, and taking into [account] the Guidelines, undertake an impact assessment, [as described in Regulation 46 (4),] based on the terms of reference [agreed] in the Scoping Report. This includes assessing:

(a) The intensity or severity of the impact at the [area being affected];

(b) The spatial extent of the impact relative to the availability of the habitat type affected;

(c) The sensitivity [and] vulnerability of the ecosystem to the impact;

(d) The ability of an ecosystem to recover from harm, and the rate of such recovery;

(e) The extent to which ecosystem functions may be altered by the impact;

(e bis) The extent to which Underwater Cultural Heritage may be altered or otherwise affected by the impact; and

[(f) The timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life history stages affected for its long survival.]

Co-facilitators' Comment (new, for Rev. 2): As with the previous DR, we have suggested removing the reference to human remains here.

Co-facilitators' Comment (old, for Rev. 1): We recommend inserting the text in paragraph 1(e bis) above, which was proposed in the original comprehensive set of draft textual proposals on UCH from last October. Also, similar to above, we place the reference to human remains in brackets for now, pending further IWG discussion.

We also recommend **not** referring to an Underwater Cultural Heritage Management Plan in paragraph 2(b) of the same DR at this time, even though the comprehensive set previously proposed it. Indeed, we do not retain any references to UCHMPs for this Rev. 1. In our view, the IWG has not had much of an opportunity to discuss whether there should be standalone DRs on UCHMPs or whether UCH should be folded into existing DRs on EMMPs (among others). We invite the IWG to discuss the matter further going forward.

Regulation 47 bis

Scoping

[. . .]

3. In undertaking the Environmental Impact Assessment scoping, the applicant or Contractor, shall:

[. . .]

(e) Use the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities;

[(e bis) Review the Best Available Scientific Information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities and conduct consultations with relevant Stakeholders to identify, to the extent possible, potential areas containing Underwater Cultural Heritage that are located in or otherwise associated with the areas of the proposed Exploitation activities;]

Co-facilitators' Comment (new, for Rev. 2): As with the previous DRs, we have suggested removing the reference to human remains here. We also note a suggestion that (e bis) might not be necessary, as (e) could cover the actions in (e bis) in a broader sense. We have thus placed (e bis) in brackets for now.

Co-facilitators' Comment (old, for Rev. 1): We recommend supporting the text in paragraph 3(e) above, as previously supported in the original comprehensive set of draft textual proposals on UCH. We also recommend inserting the text in paragraph 3(e bis) above, as previously proposed in the same original comprehensive set.

[. . .]

Part VI

Closure plans

Regulation 59

Closure Plan

[. . .]

2. In developing the Closure Plan, the Contractor shall, in accordance with the requirements of Annex VIII, set out the responsibilities and actions of a Contractor during any temporary suspension, and also for the Decommissioning and Closure of activities in a Mining Area, including the post-closure management and monitoring of remaining Environmental Effects. In fulfilling these responsibilities, the Contractor shall, *inter alia*:

[. . .]

(c) Final environmental condition of the area, including the state of remaining [resources, the oceanographic, geological, biological, socioeconomic and **sociocultural conditions**], and ensure the risks relating to residual Environmental Effects are identified, quantified, assessed and managed in accordance with Best Available Scientific Information, Best Available Techniques and Best Environmental Practices, which includes the gathering of information relevant to Closure or suspension;

Co-facilitators' Comment (new, for Rev. 2): Nothing new, other than making “sociocultural condition” plural.

Co-facilitators' Comment (old, for Rev. 1): We propose that the IWG supports the reference to sociocultural condition in paragraph 2(c) above, in line with the original comprehensive set of draft textual proposals on UCH.

Part XI

Inspection, compliance, and enforcement

Section 1

Inspections

[. . .]

Regulation 99

Inspectors' power to issue instructions

[1. If, as a result of an inspection, an Inspector has reasonable grounds to determine that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of ~~[[harmful effects]~~ to the Marine Environment **[or to human remains and/or Underwater Cultural Heritage objects and sites of an archaeological or historical nature]**, the Inspector shall give a written instruction, which will have immediate effect, of a temporary nature considered

reasonably necessary to remedy the situation, in accordance with Regulation 35 and any applicable Standards, including:

Co-facilitators' Comment (new, for Rev. 2): There are no new edits introduced for this DR. However, we note a comment from a Member that the system of protection in DR35/35alt at the moment does not mention the involvement of Inspectors, so that DR might need to be adjusted if the reference to DR35 in this DR99 is retained.

Co-facilitators' Comment (old, for Rev. 1): We propose to support the reference to human remains and replace “objects and sites of an archaeological or historical nature” with “Underwater Cultural Heritage”, per the original comprehensive set of draft textual proposals on UCH from last October. We also insert a cross-reference to DR 35.

[. . .]

Annex III bis

Scoping Report

A [] Scoping Report shall include the following:

[. . .]

(c) A description of what is known about the environmental setting, including [any] Underwater Cultural Heritage sites, for the project (Contract Area and regional setting);

[. . .]

(g) A [] description of the socioeconomic and sociocultural aspects of the project [including sociocultural uses of the Mining Area (e.g., traditional navigation routes, migratory paths of culturally significant marine species, sacred sites and waters associated with ritual or ceremonial activities of Indigenous Peoples and local communities);]

Co-facilitators' Comment (new, for Rev. 2): As with the previous DRs, we have suggested deleting the reference to human remains here. We have also inserted “sites” after UCH for clarity.

Co-facilitators' Comment (old, for Rev. 1): We propose to support the text in green above and insert the text in blue above, per the original comprehensive set of draft textual proposals on UCH from last October.

Annex IV

Environmental Impact Statement

[. . .]

6. Description of the existing human activities, socioeconomic and sociocultural environment

This section should describe the socioeconomic and sociocultural environment aspects and potential impacts of the project on existing human activities and planned uses of the area for which information is publicly available. This may include

consideration of the scale of effects (such as the creation of jobs and estimates of the risk of Environmental Impacts), extent of duration of impacts in time and space, intensity or severity of social impacts and an assessment of whether impacts are likely to be cumulative. It is important to consider the social equity or distribution of impacts across different populations: in other words, which groups are likely to be affected in which ways.

Co-facilitators' Comment (new, for Rev. 2): No change from Rev. 1. However, we have received a comment from a Member that “socioeconomic” is broad enough to encompass “sociocultural” elements, and so the latter need not be mentioned. As this is longstanding text in the President’s drafts, we will leave this untouched for now but invite Members to discuss going forward.

Co-facilitators' Comment (old, for Rev. 1): We propose that the IWG supports the significant streamlining of Annex IV, as long as the UCH-relevant text from the previous version of Annex IV is preserved and reintroduced in a Standard for the EIS, including, in particular, language from the previous Section 3.1.1 on the depiction of areas designated for the protection and preservation of UCH. We also propose that the IWG supports the text highlighted in green above.

[. . .]

9. Assessment of impacts on the socioeconomic and sociocultural environment and proposed Mitigation

Provide a detailed description and evaluation of potential Environmental Impacts and Environmental Effects of the operation to the socioeconomic and sociocultural components identified in section 6 [and a summary of the environmental management measures to mitigate impacts and residual effects. This should include projections on the potential impacts in national waters outside the Mining Area and should also consider the entire lifespan of the project i.e. construction/development (pre-commissioning), operational (including maintenance) and Decommissioning phases. A description of the benefits to humankind may be included. Attitudes towards, and perceptions of, the proposed project are among the variables that should be considered in determining the significance of impacts. The potential for accidental events [and natural hazards] should also be considered.

Co-facilitators' Comment (new, for Rev. 2): No change from Rev. 1.

Co-facilitators' Comment (old, for Rev. 1): We propose that the IWG supports the significant streamlining of Annex IV, as long as the UCH-relevant text from the previous version of Annex IV is preserved and reintroduced in a Standard for the EIS. We also propose that the IWG supports the text highlighted in green above.

Schedule

Use of terms and scope

[. . .]

“Underwater cultural heritage” refers to all traces of human existence found in the Area which have been underwater for at least 100 years, having a cultural, historical or archaeological character, or are associated with intangible underwater cultural heritage, such as objects of prehistoric character, sites, structures, buildings, artifacts, vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context. [It also refers to objects or sites which are the subject of intangible underwater cultural heritage.]

[For this purpose, **“intangible underwater cultural heritage”** refers to practices, representations, expressions, knowledge, skills, and traditions that are transmitted from generation to generation – as expressed in the instruments, objects, artefacts, flora, fauna and cultural spaces associated therewith – that communities, groups, or, in some cases, individuals recognize as part of their cultural heritage; and relate to the underwater environment and its interaction with human cultures. This may include, but is not limited to, traditional navigation knowledge, oral histories associated with maritime landscapes, spiritual and ritual practices linked to water bodies, and artisanal fishing techniques.]

[. . .]

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

[. . .]

Co-facilitators’ Comment (new, for Rev. 2): We have replaced “In this context” with “For this purpose,” per a proposal from a Member, in order to focus the usage of “intangible underwater cultural heritage” some more. It was also suggested to reinstate a reference to “human remains” in the definition of UCH, as in the 2001 UNESCO Convention on UCH, although such a reference would then be limited to human remains that are at least 100 years old underwater. If this reference is reinstated, then most of the references to human remains in the rest of the Regulations might be deleted, especially where those references are paired with references to UCH (except in limited circumstances). As for as the protection of more recent “human remains” is concerned (i.e., those that are less than 100 years old underwater), we suggest that these would be covered by the general obligation under DR4bis to avoid disturbance of human remains and to give proper respect to all human remains in the Area.

It was also proposed to use the existing definitions of UCH and intangible cultural heritage under their respective UNESCO Conventions for reasons of consistency and for avoiding the fragmentation of international law. We note, however, that if this is done, then there might be some difficulty in including, e.g., the phrase “associated with intangible underwater cultural heritage”, which accommodates to a certain extent the views of those Members that are in favour of including intangible (underwater) cultural heritage in the Regulations.

Finally, per feedback, we have placed in brackets the additional language in the definition of “Stakeholder,” with the understanding that “association of persons” clearly includes Indigenous Peoples as well as local communities, and so those groups do not need to be mentioned in the definition.

Co-facilitators' Comment (old, for Rev. 1): We propose to re-introduce the textual proposal for the amendment to the definition for “Stakeholder”, as referenced above in blue and as contained in the original comprehensive set of draft textual proposals on UCH from last October. We also suggest that the definition of “Protection” not be revised to include a reference to human remains and UCH, as it would be more effective to address protection measures for human remains and UCH in the relevant DRs rather than in a cross-cutting/holistic/general manner.

We also propose to introduce a broad definition of UCH that uses the previous definition of tangible UCH from the original comprehensive set of draft textual proposals on UCH from last October to be the definition of UCH in general, with an added paragraph that provides a sub-definition for intangible UCH as referenced in this new broad definition of UCH. We also note that a comment has been raised that there is no need to refer to human remains elsewhere in the overall DRs because the previously-proposed definition of tangible UCH included a reference to human remains. However, we note that there has been a consistent request from a number of delegations as well as at least one regional group for explicit references to human remains throughout the DRs, in line with text in the exploration regulations. We thus propose to retain references to human remains elsewhere in the DRs and not include a reference to human remains in the definition above for UCH.

A final broad comment: We have retained the approach of referring to UCH throughout the text and then referring to intangible UCH only as an explanatory element for the definition of UCH, as above. However, if we are to go down the road of focusing on primarily tangible UCH for the regulations and leaving intangible matters for, e.g., the UCH Committee to flesh out at a later date (while also including elements on traditional knowledge and cultural rights/interests in the regulations at the outset), then the IWG might want to either drastically shrink the explanatory element on intangible UCH above or delete it altogether. We have thus inserted brackets around the last sentence of the definition of UCH as well as around the entire explanatory element on intangible UCH above (and put all of that in yellow highlight), for the consideration of the IWG.