

## Report of the Co-Facilitators of the Working Group on the Rights and Interests of Coastal States

The small Working Group on the Rights and Interests of Coastal States (“**SWGCS**”) met intersessionally for two informal meetings on Thursday, 19 June 2025 and Friday, 20 June 2025. During these two informal meetings, the SWGCS focused on comments received by the facilitators on a draft textual proposal for Regulation 4 of the exploitation regulations (“**DR 4 Alt**”), which had been circulated towards the close of Part I of the 30<sup>th</sup> session of the Council of the International Seabed Authority (“**ISA**”). The discussion text which was used during the informal meetings can be found at **Annex A** to this report.

2. The informal meetings were well attended. Apart from the co-facilitators **Portugal** and **Singapore**, **Argentina**, **Australia**, **China**, the **Federated States of Micronesia**, **Japan**, **Mexico**, **Netherlands**, **PEW Charitable Trusts** and **The Metals Company** also tuned in virtually. Written comments were also received from **Chile**, **India** and **Spain** on the discussion text. The following section is a broad summary of the discussions of the SWGCS during the informal meetings, without purporting to be an exhaustive record of all the comments expressed during said meetings.

### *Summary of discussions*

3. At the outset, the co-facilitators emphasised that the discussion document mainly compiled textual proposals that were received on the DR 4 Alt text, and other proposals which did not work off DR 4 Alt (e.g. **Mexico**’s DR 4 Alt Alt proposal) were not reflected in the document. The co-facilitators explained that this presentation format was only to focus discussions during the informal meetings and was without prejudice to the fact that **Mexico**’s proposals remained on the table for delegations’ consideration. It further remained open for the Working Group to decide if we should be working on the basis of a different text, be it Mexico’s proposed DR 4 Alt Alt or otherwise. There were no objections raised to this proposed approach during the meetings, and one delegation voiced support for working on the basis of the co-facilitators’ DR 4 Alt text going forward.

### Paragraph 1

4. The text for paragraph 1 which was considered during the meetings is as follows.

Nothing in these Regulations shall affect the rights and legitimate interests of coastal States under Article 142 and other relevant provisions of the Convention.

Apart from commenting on the text itself, delegations were invited to reflect on the following guiding questions in relation to paragraph 1:

- (1) How do delegations understand the phrase “other relevant provisions of the Convention”?

(2) Would DR 4 Alt be better served by listing out said relevant provisions? Should the list be a closed or an open one?

5. In response, delegations generally expressed support for paragraph 1 of DR 4 Alt and the level of generality which it was pitched at. One delegation shared the view that paragraph 1 should be an “umbrella” paragraph; another delegation expressed that it saw paragraph 1 being formulated in an open way. With respect to question 2, one delegation expressed that insofar as paragraph 1 was not limited to just Article 142 of the Convention, it could be open to exploring the listing of other provisions of the Convention in this paragraph.

#### Paragraph 2

6. The text for paragraph 2 (new proposals in red and underlined) which was considered during the meetings is as follows.

Contractors, as well as the Enterprise, shall take all necessary measures to ensure that their activities are conducted with due regard to the rights and legitimate interests of the relevant coastal States in accordance with applicable regulations and standards.

7. Most delegations voiced support for the insertion of “legitimate” into paragraph 2, which one delegation noted was in line with Article 142 of the Convention. That said, another delegation raised the question of whether including “legitimate” in this paragraph would mean that DR 4 Alt would be interpreted as only covering with the rights and legitimate interests found in Article 142.

8. There was also support expressed for the proposed addition reading “in accordance with applicable regulations and standards”, and several delegations indicated that it was unnecessary to list out the specific regulations and standards which this additional text intended to refer to.

9. One delegation noted that it could be useful to expand paragraph 2 to explicitly include applicants as well, though this would have to be cross-checked against the definition of “Contractors” throughout the draft exploitation regulations.

#### Paragraph 3

10. The text for paragraph 3 (new proposals in red and underlined) which was considered during the meetings is as follows.

3. Without prejudice to other necessary measures taken pursuant to paragraph 2, contractors or the Enterprise shall engage with potentially affected coastal States, at an early stage from the stage of approval of plan of work and throughout the exploitation contract in accordance with applicable regulations and standards.

Apart from commenting on the text itself, delegations were invited to reflect on the following guiding questions in relation to paragraph 3:

(1) What does “engage with” mean?

(2) Would DR 4 Alt be better served by setting out examples of what activities fall within “engage with”? Should the list be a closed or an open one?

11. With respect to question (1), some delegations considered that the words “engage with” were too imprecise as to what concrete actions ought to be taken by contractors. It was suggested that “consult with” or “engage in consultations with” could clarify what said concrete actions were. On the other hand, there was also support expressed for using “engage with” in paragraph 3: one delegation considered that while “engage with” per se might not be very clear, its interpretation would be clear enough in the context of the other applicable regulations and standards. Another delegation noted that the words “engage with” were used in other parts of the draft exploitation regulations and that it might not be desirable to be too prescriptive about what actions ought to be taken by contractors vis-à-vis the coastal States concerned.

12. Delegations raised questions about the textual proposal “from the stage of approval of the plan of work”. It was expressed that more clarity on the exact timeframe which the engagement with coastal States concerned, be it in the form of consultations or otherwise, would be desirable. In this regard, one delegation considered that the phrase “prior to submitting an application for a plan of work”, which had been discussed in the context of the test mining working group, could be an instructive alternative.

#### Paragraph 4

13. The text for paragraph 4 (new proposals in red and underlined) which was considered during the meetings is as follows.

~~Environmental Impact Assessments shall consider cross boundary effects on the coastal State’s marine ecosystem.~~ (para 4 may be moved to a regulation in the Part IV section 2)

14. Delegations unanimously expressed support during the meetings for paragraph 4 to be deleted and for its contents to be moved to another, more suitable regulation in Part IV section 2 of the draft exploitation regulations.

#### Paragraph 5 (now paragraph 4, if paragraph 4 is deleted)

15. The text for former paragraph 5, new paragraph 4 (new proposals in red and underlined) which was considered during the meetings is as follows.

The potentially affected coastal States referred to in paragraph 3 above shall include:

- a) Coastal States, which ~~may include those that~~ are adjacent to any contract area ~~covered by the Plan of Work~~, whose sovereign rights for the purpose of exploring and exploiting, conserving or managing Marine natural resources, in accordance with the Convention, may be affected.

*(based on article 56(1) (a))*

- b) Coastal States, which ~~may include those that~~ are adjacent to any contract area covered by the Plan of Work, whose exercise of jurisdiction with regard to the Protection and Preservation of the Marine Environment, in accordance with the Convention, may be affected.

*(based on article 56 (1) (b) (iii))*

- c) Coastal States across whose jurisdiction the resources related to the activity may lie.

*(based on article 142 (1))*

- d) States that carry out, in the area of the planned activity, any activities, including economic activities, that may reasonably be believed to be affected.

16. As regards the new proposed amendments to paragraphs 5a) and 5b), some delegations expressed flexibility to take them into DR 4 Alt. One delegation in particular observed that the said amendments narrowed the scope of DR 4 Alt to just adjacent coastal States. Another delegation expressed a preference for reinstating “may include those that”.

17. As regards the new proposal for paragraph 5d), some delegations questioned if the textual proposal expanded the scope of DR 4 Alt beyond the category of coastal States. In this regard, one delegation observed that States falling within the description in paragraph 5d) could be landlocked as well. One delegation also sought clarification on the meaning of “in the area of the planned activity”, and noted that this paragraph had to be interpreted with reference with other freedoms on the high seas.

#### Paragraph 5

18. The text for paragraph 5 (new proposals in **red** and underlined) which was considered during the meetings is as follows.

Potentially affected coastal States may submit to the Authority scientific data and assessments on potential effects likely to be caused by the activities of the contractor and may request modifications to mining plans if risks are identified.

Apart from commenting on the text itself, delegations were invited to reflect on the following guiding questions in relation to paragraph 5:

- (1) At what point in time (e.g. during the preparation of a plan of work or after commencement of exploitation activities) should coastal States be allowed to request modifications to the Plan of Work? Is there a point in time where coastal States should not be allowed to make such requests?
- (2) Should paragraph 5 specify the said point(s) in time / window period for coastal States to make such requests?

19. As regards question (1), some delegations expressed that the requests for modifications should be raised at the point of time before applications for a plan of work received approval. However, it was expressed by one delegation that in the circumstance where said potential effects were sufficiently serious, potentially affected coastal States should not be time-barred with respect to raising requests for modifications.

20. It was expressed that potentially affected coastal States should not be only limited to submissions of “scientific data and assessments on potential effects”, and such coastal States should be allowed to submit other relevant information as well.

21. One delegation further expressed that the paragraph could be clearer as to what would become of requests to modify mining plans were raised, e.g. whether there should be attendant obligations on contractors, or further steps covered by this paragraph.

Proposed Regulation 4 bis (general) and Regulation 93 quinquies (specific)

22. Other than text to amend DR 4 Alt and a proposal for DR 4 Alt Alt, the co-facilitators also received proposed text for a new Regulation 4 bis and Regulation 93 quinquies.

**Regulation 4 bis (general):**

**"SOVEREIGNTY, SOVEREIGN RIGHTS OR JURISDICTION**

**THESE REGULATIONS INCLUDING ANY ACTS, MEASURES, DECISIONS OR ACTIVITIES UNDERTAKEN ON THE BASIS THEREOF, SHALL BE WITHOUT PREJUDICE TO, AND SHALL NOT BE RELIED UPON AS A BASIS FOR ASSERTING OR DENYING ANY CLAIMS TO, SOVEREIGNTY, SOVEREIGN RIGHTS OR JURISDICTION, INCLUDING IN RESPECT OF ANY DISPUTES RELATING THERETO. IN NO CASE SHALL THE IMPLEMENTATION OF THESE REGULATIONS BE INTERPRETED AS RECOGNITION OR NON-RECOGNITION OF ANY CLAIMS TO SOVEREIGNTY, SOVEREIGN RIGHTS OR JURISDICTION".**

**- Regulation 93 quinquies (specific):**

**"Sovereignty, sovereign rights or jurisdiction IN IDENTIFICATION AND CONSULTATIONS WITH COASTAL STATES**

**Identification of and consultations with coastal States INCLUDING THOSE pursuant to Article 142 of the Convention, including any acts, measures, decisions or activities undertaken on the basis thereof, shall be without prejudice to, and shall not be relied upon as a basis for asserting or denying any claims to, sovereignty, sovereign rights or jurisdiction, including in respect of any disputes relating thereto. In no case shall the implementation of these procedures nor the abovementioned acts and activities be interpreted as recognition or non-recognition of any claims to sovereignty, sovereign rights or jurisdiction".**

23. There was insufficient time during the meetings to fully consider proposed Regulation 4bis and Regulation 93 quinquies. It was, however, expressed by one delegation that the two proposed paragraphs appeared to address broader considerations which should be taken up at

a different platform as opposed to the narrow focus of this SWGCS on coastal States' rights and interests.

*Next steps*

24. The co-facilitators committed to reviewing all submissions and comments received on DR 4 Alt and circulating a revised version for the SWGCS's consideration during Part II of the 30<sup>th</sup> session of the Council of the ISA in July 2025. Apart from the two hours which have been carved out in the indicative plan of work to address this topic, the co-facilitators indicated that an additional informal may be necessary in order for the SWGCS to reach consensus.

25. The revised version of the discussion text referred to in paragraph 24 above can be found at **Annex B** for further consideration during Part II of the 30<sup>th</sup> session of the Council of the ISA.

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