

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

Black font, **red font**, and grey text-boxes are replicated from the Draft Regulations text.

Blue font represents commentary or edits proposed by The Pew Charitable Trusts.

Schedule

Use of terms and scope

We do not understand why the terms proposed the IWG on UCH were not included for discussion here. We agree they should be discussed and resolved, and – in order for that discussion to occur – the terms as proposed need to be provided. We support inclusion in the Schedule of the terms “Intangible Underwater Cultural Heritage”, “Tangible Underwater Cultural Heritage”, and “Underwater Cultural Heritage”, as defined by the IWG on UCH (below).

- *“Underwater cultural heritage” includes tangible and intangible underwater cultural heritage.*
- *“Tangible 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 human remains, 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.]*
- *“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.*

“Authority” means the International Seabed Authority as established by part XI of the Convention and for the purposes of these Regulations shall include all organs of the Authority save for the Enterprise, except where the Enterprise is expressly stated as being included.

“Agreement” means the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

“Application” and **“Applicant”** means an application and an applicant, respectively, for a plan of work for exploitation in the form of a contract.

We suggest to add these defined terms, and use them consistently throughout the regulations.

“Arms Length”

“Arms Length Value”

“Best Available Scientific [Information]/[Knowledge]” means the scientific information and data accessible and attainable that, in the particular circumstances, is of good quality and is objective, within reasonable technical and economic constraints, and

is based on internationally recognized scientific practices, standards, technologies and methodologies, including peer review.

[**“Best Available Techniques”** means the latest stage of development, and state-of-the-art processes, facilities or methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the Protection of the Marine Environment from the harmful effects of activities in the Area, taking into account the guidance set out in the applicable Standards and Guidelines.]

[**Alt. “Best Available Techniques”** means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:

- (a) ‘techniques’ includes both the technology used and the way in which the Installation is designed, built, maintained, operated and Decommissioned;
- (b) ‘available techniques’ means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator.
- (c) ‘best’ means most effective in achieving a high general level of protection of the environment as a whole;]

This definition in Alt 1 seems to have been taken from the European Union’s Directive on Industrial Emissions. For the purposes of defining BAT in the seabed mining context, where environmental performance levels might have other indicators (in addition to emission levels) the more general paragraph is preferred.

“Best Environmental Practices” means the application of the most appropriate combination of environmental control measures and strategies, for purposes of ensuring the effective protection of the Marine Environment, and based on the Best Available Scientific Information and Best Available Technology that will change with time in the light of improved knowledge, understanding or technology, as well as the incorporation of the relevant traditional knowledge of Indigenous Peoples and local communities and in accordance with applicable Standards taking into account the relevant Guidelines.

We remain a little confused with the use of the terms: GIP, BEP, BASE/BASI, BAT throughout the Regulations, and consider this is a matter that could be usefully taken as a specific issue for attention from a working group or other volunteer, to analyse how the terms are used in different places in the Regulations, and to check that it is consistent, and that the definitions provided in this Schedule make sense.

In our view, Best Environmental Practices, which is a standard required by the ISA from Contractors (and sponsoring States) in delivering their environmental obligations under the Regulations, should encompass use of Best Available Scientific Evidence/Information, and Best Available Techniques and this should be clear from the definition of BEP in the Schedule. So that each time ‘BEP’ is used in the Regulations, there is no need to add ‘BASE/BASI’ or ‘BAT’ alongside.

In this defined term, we query the use of the term ‘Best Available Technology’ as is not a defined term nor used elsewhere in the regulations.

“Calendar Year” means a period of 12 months, ending with 31 December.

“Change of Control” means where there is a change resulting in ownership of 50 percent or more of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change resulting in ownership of 50 percent or more of the entity providing an Environmental Performance Guarantee

This definition of Change of Control only addresses ownership. It is normal industry practice to also include changes of the Directors. We propose the following:

“Change of Control” means the occurrence of any of the following events: (a) a transaction by which any person or group obtains beneficial ownership of more than 50% of the outstanding voting stock of the Company or newly represents more than 50% of the combined voting power with respect to the election of directors; (b) a merger or consolidation of the Company with any other entity where the resulting entity is not controlled by the Company's pre-existing shareholders; (c) the sale or transfer of substantially all of the Company's assets; (d) a change in the majority of the Company's Board of Directors as the result of a transaction.

“Closure” means activities undertaken within a Contract Area once Commercial Production has ceased, and includes; Decommissioning, post-mining monitoring and reporting, and any Rehabilitation and Restoration or compensatory measures that may be agreed.

We support inclusion, and the substance, of this definition. It may be helpful also to refer to the Closure Plan in the definition, as the document that sets out the obligations that comprise ‘Closure’ for a specific contract.

“Closure Plan” means a document that contains an integrated environmental, social and economic base case for Decommissioning, closure and postclosure activities and conditions against which future monitoring can be compared. It will be revised through the lifetime of the Exploitation Contract and must be considered as an integral part of operational planning.

“Commercial Production” shall be deemed to have begun where a Contractor engages in Sustained Large-scale Recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information-gathering, analysis or the testing of equipment or plant.

Commercial Production is a key milestone within the mining operation, not only is commencement of Commercial Production the date from which royalties must be paid, but also maintenance of Commercial Production is a key performance indicator for the ISA's oversight of the project, and also the end of Commercial Production is the date at which the Closure Plan is implemented. Given that both the commencement and cessation of Commercial Production imply financial costs to the Contractor, there needs to be an objective definition of ‘Commercial Production’ in the Regulations and an objective process by which the ISA can verify whether or not Commercial Production has commenced, is being maintained, and/or has ceased. Standards may be required in this regard (and if so, can be cross-referenced here).

We note that this definition makes a link to Sustained Large Scale Recovery as the metric by which Commercial is Production. To us it seems that the new definition for ‘Sustained Large-scale Production’ seems to have almost identical meaning to ‘Commercial Production’. We also do not see this new defined term being used in the regulations, save for one proposed insertion in DR25. We welcome clarity on the value of this new term ‘Sustained Large-Scale Recovery and if some of that definition including the mention of Standard could simply be migrated into this definition.

“Commission” means the Legal and Technical Commission of the Authority.

We suggest that ‘the LTC’ may be a better-defined term for the Legal and Technical Commission, to avoid confusion with other Commissions that will or may be created in the future (e.g. the Economic Planning Commission).

“Communication” means any application, request, notice, report, consent, approval, waiver, direction or instruction required or made under these Regulations;

“Company Principals”

“Competent Independent Experts”

The revised consolidated text of the draft regulations provide for recourse to independent experts during ISA processes more than a dozen times. There have been various proposals in the past for new expert committees or rosters, from which the organs of the ISA (including the LTC itself) can obtain such additional independent expertise where required. Opinions appear to remain divided and varied, about who qualifies as an independent expert and how this can be verified, the role of the LTC, its relationship with independent experts, when independent experts can or should be sought, how that procurement would work, what principles should be applied to the selection of experts, and how to ensure a fair and transparent process of selecting experts. This is a cross-cutting issue that arises repeatedly and is approached inconsistently throughout this draft text (which currently reference guidelines and/or a roster, which do not exist). This is an extremely important part of the regime and should be safeguarded to protect against conflicts of interest, corruption, or other procedural factors that may lead to poor and challengeable outcomes. We suggest that the ISA develops policies and procedures around transparent access to the independent expertise necessary for the discharge of ISA member States' obligations, which can then be referred to in a defined term in the Schedule. Such policies could also inform current procurement of experts, which takes place now in the absence of such agreed procedure and criteria.

“Compliance Notice” means [to be defined]

“Confidential Information” shall have the meaning assigned to that term by Regulation 89.

“Contract Area” means the part or parts of the Area allocated to a Contractor under an Exploitation Contract and defined by the coordinates listed in schedule 1 to such Exploitation Contract.

“Contractor” means any party to an Exploitation Contract (other than the Authority) in accordance with Part III of these Regulations and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the Exploitation Contract.

Comment

- The definition intends to encompass the Enterprise as well as other Contractors. It is necessary to assess whether this wording is the most comprehensive and whether it necessitates amendments to some Regulations. There are some uses of “Contractor” in the Regulations that do not intend to include the Enterprise. In general, it is also necessary to streamline these references once, it has been decided how reference should be made to Contractors and the Enterprise.
- Another element that has been raised by a delegation is the fact that the term “Contractor” presently includes the Contractor’s employees, subcontractors, agents and all persons engaged in working or acting for the Contractor in the conduct of its operations under the Exploitation Contract where the context applies. It should be discussed how this broad definition of Contractor should be read across the various regulations and what the implications on commercial activities would be.

“Convention” means the United Nations Convention on the Law of the Sea.

“Council” means the executive organ of the Authority established under Article 158 of the Convention.

“Cumulative Environmental Effect” means any [material] consequences in the Marine Environment arising over time from the conduct of Exploitation activities or in combination with other stressors and activities in the same area, including those not regulated by the Authority. In case of cumulative effects, the combination of all effects in the same area may be more severe than the sum of its parts.

We recommend deleting the qualifier ‘material’ in this definition which to us is ambiguous.

“Day” means calendar Day.

“Decommissioning” means measures taken, whether onshore or offshore, to permanently cease the operations, remove, or dispose of structures, facilities, Installations, and other equipment erected or used for the purposes of activities undertaken pursuant to an Exploitation Contract, in connection with the abandonment or

cessation or partial cessation of those activities in a Contract Area or part of a Contract Area.

“Designated Representative” means the person so named on behalf of a Contractor on the Seabed Mining Register or prior to award of the Exploitation Contract, in the application.

“Directors and Officers” means the individuals who serve on a company's board of directors and those hold executive positions within the company and managing the day-to-day operations of the business (e.g., CEO, CFO, COO, President, and Treasurer).

“Effect” is the consequence or outcome of an action or activity during the project; it is typically broader and more functional than an impact.

We query the necessity of this defined term (given “Environmental Effect” is defined below but does not use this defined term ‘Effect’).

“Effective Control” or **“effectively controlled”** means a required, substantial and genuine link between Sponsoring State and Contractor, which includes for non-State actors the location of the company’s management and beneficial ownership, as well as the ability of the Sponsoring State to ensure the availability of resources of the Contractor for fulfilment of its Exploitation Contract with the Authority and any liability arising therefrom, through the location of such resources in the territory of the Sponsoring State or otherwise.

“Effective Control” or **“effectively controlled ALT”** means the substantial and genuine link between Sponsoring State and Contractor, demonstrated by the Contractor being a national of the Sponsoring State and being subject to its effective jurisdiction and regulatory control.

“Emergency Response and Contingency Plan” means the document referred to in Annex V.

“Environmental Effect” means any consequences in the Marine Environment, arising from [Environmental Impacts caused by] the conduct of Exploitation activities, being positive, negative, direct, indirect, temporary or permanent.

[Alt. **“Environmental Effect”** means any material consequences in the Marine Environment arising from the conduct of Exploitation activities, whether positive, negative, direct, indirect, cumulative, temporary or permanent.]

“Environmental Impact” means changes, physical and or chemical, to the environment, resulting from Exploitation activities.

“Environmental Impact Assessment” means the process of identifying, predicting, evaluating and mitigating the physicochemical, biological, socioeconomic, and other relevant effects of development proposals prior to major decisions being taken and commitments made. This includes all potential effects, both positive and negative, and encompasses natural and anthropogenic receptors.

“Environmental Impact Statement” means the documentation of the Environmental Impact Assessment, which describes the predicted effects of the project on the environment (and their significance), the measures that the applicant is committed to taking to avoid, minimise and reduce them where possible, and the remaining effects that cannot be avoided.

“Environmental Management System” means the part of the overall management system [implemented]/[applied] by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals, objectives and environmental performance.

[Alt. **“Environmental Management System”** means part of the management system used to manage environmental aspects, fulfil compliance obligations, and address risks and opportunities.]

“Environmental Risk Assessment” means the process for identifying and evaluating Environmental Risk using a generally accepted risk assessment methodology.

“Environmental Performance Guarantee” means a financial guarantee supplied under Regulation 26.

“Environmental Performance Guarantor” means each entity or individual that provides an Environmental Performance Guarantee in accordance with these Regulations.

“Environmental Plans” means the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure Plan.

“Exploit” and **“Exploitation”** mean the recovery for commercial purposes of Resources in the Area with exclusive rights and the extraction of Minerals therefrom, including the construction and operation of mining, processing and transportation systems in area beyond national jurisdiction, for the production and marketing of metals, as well as the Decommissioning and Closure of Exploitation activities.

“Exploitation Contract” means an exploitation contract entered into between the Authority and a Contractor in the form prescribed in Regulation 17 and Annex IX to these Regulations.

“Exploration Regulations” means the regulations on prospecting and exploration for polymetallic nodules in the Area, the regulations on prospecting and exploration for polymetallic sulphides in the Area and the regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area, as the case may be and as replaced or amended by the Council from time to time.

“Explore” and **“Exploration”**, as applicable, mean the searching for Resources in the Area with exclusive rights, the analysis of such Resources, the use and testing of recovery systems and equipment, processing facilities and transportation systems and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in Exploitation.

“Feasibility Study” means a comprehensive study of a Mineral deposit in which all geological, engineering, legal, operating, economic, social, environmental and other relevant factors are considered.

As we mentioned in the context of DR25, we believe further consideration should be given to the definition and content of a Feasibility Study, and the policy intention behind its inclusion in the regulations. The meaning attributed to it here in the Schedule, is extremely wide and would appear to overlap considerably with the Mining Workplan, EIS, EMMP and Financing Plan, already required under the regulations. We consider that the Feasibility Study, as used in the context of these Regulations, is really a study designed to verify or modify the information previously supplied in the Mining Workplan, considering new information collected since Contract grant, with the purpose to agree whether or not the Contractor commences Commercial Production. In our view this should either be re-framed as a ‘verification study’, or better: replaced with a review and revision of the Mining Plan (following DR57’s ‘material change’ process).

“Final Closure Plan” means the version of a Contractor’s Closure Plan that has been approved by the Council pursuant to Regulation 60.

“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. **“Financing Plan”** means the document referred to in Annex III.

“Force Majeure” means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force provided that such acts arise from causes beyond the control and without the fault or negligence of the Contractor.

“Good Industry Practice” means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide [and includes meeting the performance requirements under the rules, regulations and procedures of the Authority].

We remain a little confused with the use of the terms: GIP, BEP, BASE/BASI, BAT throughout the Regulations, and consider this is a matter than could be usefully taken as a specific issue for attention from a working group or other volunteer, to analyse how the terms are used in different places in the Regulations, and to check that it is consistent, and that the definitions provided in this Schedule make sense. In our view, ‘Good Industry Practice’ represents a threshold of reasonableness within the context of the range of abilities and practices within the sector. GIP should be used in the Regulations each time there is a need to hold the Contractor to perform its functions with due diligence and reasonable care (i.e. not negligently). To reflect the assessment criterion included in DR13, we would suggest to add into the definition of “Good Industry Practice” the following additional wording: *“maintaining and adhering to internationally-recognised quality control and management standards, including on the assessment of the equipment, operational procedures and processes used in Exploitation activities in accordance with applicable Standards and taking into consideration Guidelines”*.

“Guidelines” means such documents issued by the organs of the Authority pursuant to Regulation 95.

“Impact Area” means the zone or region on the seafloor and in the water column subject to measurable effects from activities under an Exploitation Contract related to 1 or several Mining Area(s).

We recommend integrating the defined terms Environmental Impacts and possibly Environmental Effects into this definition.

“Impact Reference Zone” (or “IRZ”) means a zone designated within the Contract Area [in accordance with Annex X bis to these Regulations] that is representative of the environmental characteristics of the Contract Area, is predicted to be impacted by Exploitation activities, and will be used to assess the effects of activities under an Exploitation Contract on the Marine Environment, including by way of comparison with the Preservation Reference Zones.

“Incident” means an event, or sequence of events, where activities in the Area result in:

- (a) A marine Incident or a marine casualty as defined in the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code, effective 1 January 2010);
- (b) A significant unanticipated or unpermitted adverse impact to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such adverse impact was only narrowly avoided is a reasonably foreseeable consequence of the situation; and/or
- (c) Damage to a submarine cable or pipeline, or any Installation.

Rather than referencing a specific and timebound document (managed by another institution) in paragraph (a) of this definition, we consider it would be better to reference applicable Standards. The Standards will more frequently be updated and are therefore better suited to referencing documents such as these which may change or be replaced.

We also query the accuracy of this definition in substance. The definitions in this Safety Code cross-referenced in paragraph (a) apply only to events that have occurred *‘directly in connection with the operations of a ship’*. They relate to a flag State’s jurisdiction over shipping operations. This then appears to exclude the deep seabed mining operations

(carried out from that ship) - which is the part that falls under the ISA's jurisdiction. The Code definition also includes issues (e.g. injury of a crew member) that in our view may not require the full response required for an Incident (triggering of the Emergency Response and Contingency Plan, ISA notifying coastal States etc).

“Incidents Register” means a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events.

“Income”

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

“Inspector” means a person acting under Part XI of these Regulations.

“Inspector Code of Conduct” means [to be inserted]

“Installations” includes, insofar as they are used for carrying out activities in the Area, structures and platforms, whether stationary or mobile.

“Managing Company” means [to be inserted]

We suggest this term be defined also in the plural, as there may be instances of joint venture ownership. The ISA may wish to ensure guarantees are provided from all of the parent or owner companies. We suggest that relevant factors in this definition may include: voting rights in the Contractor, powers to appoint or remove the Contractor's board of directors, having the right to exercise (or in practice exercising) control over significant operational decisions, or otherwise holding dominant influence over the Contractor.

“Marine Environment” includes the physical, chemical, oceanographic geological, genetic, and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, species, biodiversity, ecosystems, as well as the seabed and ocean floor and subsoil thereof.

“Material Change” means a [substantial]/[significant] change that affects the basis on which an original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, changes to harmful effects of activities on the Marine Environment, other Environmental Effects or effects on stakeholders, the availability of new knowledge or technology and changes to operational management that are to be considered in light of the applicable Guidelines.

[Alt **“Material Change”** means a substantial or significant change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority.]

[Alt 2 **“Material Change”** means a change that effects the fundamental basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority].

“Metal” means any metal contained in a Mineral.

“Minerals” means Resources that have been recovered from the Area.

“Mining Area” means the part or parts within the Contract Area from which Minerals will be extracted, as described in a Plan of Work, as may be modified from time to time in accordance with these Regulations.

“Mining Discharge” means any sediment, waste or other effluent directly resulting from Exploitation, including shipboard or Installation processing immediately above a mine site of Minerals recovered from that mine site and includes but is not limited to, disposal, spilling, leaking, pumping, emitting, emptying, or discharging.

We are not quite clear whether this definition for “Mining Discharge” would include seawater that has been 'cleaned' to a certain degree. What type of granularity represents 'sediment'? What if the substance to be discharged is thoroughly cleaned water, but of a different temperature or chemical composition? These seem important distinctions and would like to see clarification in the definition.

“Mining Workplan” means the document referred to in Annex II, including any modifications made from time to time in accordance with these Regulations.

“Mitigate” and **“Mitigation”** means acting/an action or activity intended to remedy, reduce or offset known potential negative impacts to the environment. These occur in a strict hierarchy:

- (a) Avoiding an Environmental Effect altogether by undertaking or not undertaking a certain activity or parts of an activity;
- (b) For Environmental Effects that cannot be avoided, minimizing effects by limiting the degree or magnitude of the activity and its implementation [to the extent practicable and necessary to ensure protection of the Marine Environment];
- (c) For Environmental Effects that cannot be avoided or minimised rectifying the effect by repairing, rehabilitating or restoring the affected Marine Environment; and
- (d) For Environmental Effects that cannot be avoided, minimised or rectified, reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity;

[(e) Offsetting, only as a last resort.]

We agree with the amendments in principle which show more clearly that it is a hierarchy - minimization is only used for effects that cannot be avoided, and rehabilitation is only used for effects that cannot be avoided or minimized. We believe there has now been a review of the Regulations to check each time the term ‘Mitigate’ or ‘Mitigation’ is used in the Regulations that it is used correctly. This approach should be maintained: we have noticed in the past a tendency for delegates to want to add words like ‘avoid, minimise’ etc. into the Regulations text every time the word Mitigate is used, presumably not realising those concepts are already captured in the defined term.

Lastly, and importantly while we understand that restoration and offsetting are part of the traditional mitigation hierarchy we do not believe restoration or offsetting are consistent with the ISAs obligations under Art 145. As such, we believe a policy discussion is required on whether offsetting or restoration would ever be accepted in the context of deep-seabed mineral exploitation in the Area.

[“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 2 Exploitation Contracts.]

[“Parent Company Liability Statement” means the statement that is to be validly signed by the Contractor and the Contractor’s Managing Company on behalf of those companies, and provided by the Contractor as Schedule 14 to the Exploitation Contract, as amended from, yet substantially in the same form as, Annex XI to these Regulations.]

[“Pilot Mining” means an *in situ* operating of the integrated system of all equipment and all related process steps, including collector, raiser and release techniques, for exploitation activities in a Contract Area under appropriate technical, spatial and temporal conditions which provides evidence concerning, inter alia, environmental impact, commercial capacity, duration of operations to validate feasibility of future Commercial Production.

Comment
<ul style="list-style-type: none">This suggested term is interrelated to a proposal concerning draft regulation 48 ter on test mining and reference is also made to the reference to “Test Mining” and “Test Mining ALT” below.

“Plan of Work” means a Plan of Work for Exploitation in the Area, defined collectively as all and any plans or other documents setting out the activities for the conduct of the Exploitation, which form part of, or is proposed to be part of, an Exploitation Contract.

“Preservation” means the maintenance of the environment, lands and natural resources without anthropogenic use beyond access.

“Preservation Reference Zone” (or “PRZ”) means a zone designated within the Contract Area in accordance with Annex X bis to these Regulations that has been identified as having similar ecological characteristics to an Impact Reference Zone, and within which no mining impacts are predicted to occur, which will be used to show a representative and stable ecosystem from the sea surface to the benthic subsurface layers, and can be used to form a comparison with an Impact Reference Zone.

“Protection” means any action or activity designed to reduce or prevent pollution, negative environmental impacts or other damage to environment, land, ecosystems or natural resources by human activities, including to mitigate climate change, to reduce the risk of such damage, to protect and restore biodiversity or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions and other pollutants, as well as to shift to circular economy models to reduce the use of primary materials and increase efficiencies. It also covers actions that reinforce adaptive capacity and minimise vulnerability to climate impacts.

We suggest the inclusion of *“remains, Underwater Cultural Heritage”* after ecosystems, in line with work to include UCH in the Regulations.

“Regulations” means the regulations on exploitation of Mineral resources in the Area, adopted by the Authority.

“Rehabilitation” means an occurrence of when an ecosystem recovers certain characteristics of its natural state, such as the presence of certain species, functions or services.

“Regional Environmental Management Plan” means a proactive spatial management strategy that anticipates exploitation and that includes the designation of Areas of Particular Environmental Interest.

Regulation 44bis does in fact not define or describe what a REMP is. We would recommend that following the adoption of a standardized REMP template that a definition be carried over from that document to these Regulations, or that those documents be cross-referenced here.

“Related Parties” or **“Related Party”** 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.

This definition is a good addition. It may be helpful for the Secretariat to check that it has been integrated fully and used consistently where relevant throughout the regulations.

“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.

As above, this definition seems a sensible addition, but it may be helpful for the Secretariat to check that it has been integrated fully and used consistently where relevant throughout the regulations.

“Reserved Area” means any part of the Area designated by the Authority as a reserved area in accordance with Article 8 of Annex III to the Convention.

“Resources” means all solid, liquid or gaseous Mineral resources, Mineral-bearing ore, associated Minerals, or mixture thereof *in situ* in the Area at or beneath the seabed.

“Restoration” means a return to pre-disturbance conditions.

“Roster of Inspectors” means [to be inserted]

“Rules of the Authority” means [the Convention, the Agreement,] these Regulations and other rules, regulations and procedures of the Authority, including Standards and Guidelines as may be adopted from time to time.

“Scoping Report” means [to be inserted]

“Seabed Mining Register” means the registry established and maintained by the Authority in accordance with Regulation 92.

["Serious Harm" means any effect from activities in the Area on the Marine Environment which represents an [unlawful] significant adverse change in the Marine Environment determined according to the rules, regulations and procedures of the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific Information [and, where available, relevant traditional knowledge of Indigenous Peoples and local communities].]

["Serious Harm to the Marine Environment ALT" means an Environmental Effect that, individually in combination or cumulatively meets any of the following criteria:

- (a) it is not likely to be redressed through natural recovery within a reasonable period;
- (b) it impairs the ability of affected populations to replace themselves;
- (c) it degrades the long-term natural productivity of habitats or ecosystems;
- (d) causes, on a more than temporary basis, a loss of species richness or biological diversity, including community structure, genetic connectivity among populations, ecosystem functioning and ecosystem services on the seabed, at the sea surface, and in midwater and in the benthic boundary layer, or habitat; or
- (e) any other criteria contained in the relevant Regional Environmental Management Plan, or Standards.]

Comment

As already mentioned in the comment box to the preamble, the use of “Serious Harm” and “Harmful Effects” have been used inconsistently throughout the Regulations. It is thus necessary to decide on a clear and consistent approach, and the devised wording should be applied throughout the Regulation, including in the preamble, draft regulations 2,4, 13, 44, 45, 46, 48ter, 49, 51, 53bis, 53ter, 59, 96quat, 99, Annex IV and Annex VII.

We are generally supportive of the alternative definition, in favor of the original definition (which we found woefully deficient, as ‘significant adverse change’ does not provide any clearer or more actionable definition. Though we agree with the President’s comment. The term ‘serious harm’ along with ‘effective protection’, ‘unpermitted harm’, ‘environmental objectives’ etc. have not received sufficient discussion. We consider the development of an environmental policy for the ISA would greatly assist here (and could be cross-referenced in this definition).

Along similar lines, we support the reference to REMPs in paragraph (f), though we note that no such mention of criteria is in the CCZ EMP. If it is expected that additional criteria will be fleshed out in a REMP, this should be included in the REMP template under development, and the CCZ EMP will need to be revised.

“Sponsoring State” means a State party or parties to the Convention which submits a certificate of sponsorship of an applicant, and a certificate of registration for any ships/vessels or Installations used to undertake activities in the Area in accordance with Regulation 6.

“Stakeholder” means a natural or juristic person or an association of persons 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.

“Standards” means such documents adopted by the Authority pursuant to Regulation 94.

“State” means a State party or parties to the Convention.

“Strategic Environmental Goals and Objectives” means [to be inserted].

“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.

We are unsure of the value or use of this new term – please see our comments in relation to the defined term ‘Commercial Production’, above.

“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. **“Temporary Suspension”** means [to be discussed and inserted]

“Test Mining” means an *in situ* testing that do not have harmful effects on the marine environment of the integrated system of all equipment and all related process steps (e.g. including collector, raiser and release techniques) for Exploitation activities in a Contract Area under appropriate technical, spatial and temporal conditions which allows the Test Mining for the provision of evidence to support the information provided by an applicant in its application for a Plan of Work for Exploitation, and to assist the Commission and the Council in its evaluation of the application against the criteria contained in Regulation 13 and 15.

There is something missing from the definition of Test Mining, the current draft appears incomplete furthermore the definition includes the term being defined which is circular and not best practice.

“Test Mining ALT” means the use and testing of a fully integrated and functional mining system, including collection systems and water discharge systems.

“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 a payment by the Contractor to the Authority in accordance with the applicable Standard in circumstances where the Contractor has transferred its rights and obligations under an Exploitation Contract in accordance with Regulation 23.