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Draft regulations for exploitation of mineral resources in the Area

Comments on the draft regulations on the exploitation of mineral resources in the Area

Note by the secretariat

I. Introduction

1. During the second part of the twenty-fifth session, in July 2019, the Council of the International Seabed Authority considered a revised version of the draft regulations on exploitation of mineral resources in the Area prepared by the Legal and Technical Commission ([ISBA/25/C/WP.1](#)), together with a note from the Commission providing an overview of the key matters relating to the fine-tuning of the regulatory text and highlighting specific areas that require further work ([ISBA/25/C/18](#)). The Council noted with satisfaction the interactive discussion during its meetings on the draft regulations and welcomed the proposals and observations presented by member States and observers. It decided that additional written comments on the draft regulations, including specific drafting suggestions, could be sent to the secretariat no later than 15 October 2019 and requested the secretariat to prepare a compilation of the proposals and observations sent by members of the Council and a compilation of proposals and observations sent by other States members of the Authority, observers and other stakeholders, to be submitted by the President of the Council and published no later than 30 December 2019, for consideration by the Council at its twenty-sixth session ([ISBA/25/C/37](#)).

2. At the time of reporting, the secretariat had received 39 submissions of comments on the draft regulations. The breakdown of the submissions is as follows: members of the Council (19); other States members of the Authority (8); observer States (1); intergovernmental organizations (2); non-governmental organizations (6); International Seabed Authority contractors (2); and other stakeholders (1). The submissions have been compiled and made available on the website of the Authority

* [ISBA/26/C/L.1](#).



in accordance with the Council's decision.¹ In addition, a conference room paper reflecting the textual proposals made by members of the Council has been prepared and is also available on the website of the Authority.

3. The present note supplements the discussions held in the Council in July 2019 by providing a broad overview of the main issues raised in the written submissions. An overview of general points arising from specific regulatory provisions is provided in the annex to the present note. Apart from observations in relation to an environmental compensation fund, the note does not include points raised in connection with the development of the economic model and the financial terms of contracts, which are currently being considered by an open-ended informal working group of the Council ([ISBA/24/C/8/Add.1](#), para. 12 and annex II).

4. Many of the written submissions contain drafting and stylistic suggestions, as well as indications of issues that may benefit from further reflection and common understanding, and requests for clarification related to the content and purpose of a number of regulatory provisions. Detailed comments were also made on the content of some of the annexes to the draft regulations. The need to review the translations of certain terms and provisions was also noted.

II. Issues arising from the submissions

A. General observations

5. The continuous improvement in the content and drafting of the regulatory text was generally welcomed, while it was noted that further work was required on certain aspects, including with a view to ensuring consistency with the provisions of the United Nations Convention on the Law of the Sea and the Agreement relating to the Implementation of Part XI of the Convention. In that regard, the need to avoid paraphrasing the Convention, and to instead refer to its relevant articles where needed, was stressed.

6. The importance of advancing work on the draft regulations in parallel to and in a manner complementary to the necessary standards and guidelines continued to be highlighted, and the need to develop such standards and guidelines before the adoption of the exploitation regulations or prior to the approval of the first plan of work was emphasized in some submissions. Views were expressed on the required timing of the development of certain standards and guidelines, and specific standards and guidelines were suggested that would be necessary besides those indicated in the current draft regulations. The need for transparency and inclusiveness in the development of standards and guidelines was emphasized. It is noted that the Commission proposed, and the Council took note of, a process and schedule for the development of the necessary guidelines in 2020 ([ISBA/25/C/19/Add.1](#), enclosure I), and the Commission is expected to advance consideration of a number of guidelines at its next session, in particular those that, as it suggested, need to be in place by July 2020 and those to be initiated immediately but completed after July 2020.

7. In some submissions, the importance of adhering to the schedule approved by the Council and completing the regulatory framework for exploitation in 2020 was stressed. On the other hand, the view was expressed that respecting a self-imposed deadline should not come at the expense of the quality of the regulatory framework. In some submissions, attention was drawn to the work of the ongoing intergovernmental conference on an international legally binding instrument under

¹ See www.isa.org.jm/legal-instruments/ongoing-developmentregulations-exploitation-mineral-resources-area.

the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

8. The submissions continued to highlight the importance of operationalizing the common heritage of mankind in the regulations. Several submissions called for striking the right balance between a number of aspects and interests, including between exploitation and economic development on the one hand and environmental protection on the other, between the equitable sharing of benefits and sound commercial principles, and between the different categories of States (i.e. sponsoring States, flag States, coastal States and port States) and stakeholders. In particular, the rights and legitimate interests of coastal States were emphasized, with suggestions made for mechanisms of consultation, prior notification and exchange of information, and the inclusion of relevant coastal States in the preparation of emergency response and contingency plans. The need to protect the economies of States from the effects of activities in the Area was also raised. With regard to the latter issue, it is noted that the secretariat will be undertaking a study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals.

9. While it was generally recognized in the submissions that the effective implementation of the regulations would require some level of delegation of tasks, the continued need to clarify, throughout the regulatory text, the role of the various organs of the Authority and to respect their mandates was also highlighted. The submissions again contained a range of views with regard to the consistency with the Convention and the appropriateness of certain powers assigned to the Secretary-General and, in some cases, to the Commission under the draft regulations. On the other hand, some submissions indicated that additional approval mechanisms should be delegated to the Secretary-General, given the time interval between meetings of the various organs of the Authority. In addition, suggestions were made for tasks to be assigned to the Finance Committee, noting that its role was currently limited to matters concerning the environmental compensation fund. It is noted that, during the twenty-fifth session, the Commission concurred that the development of an operational policy document by the Council, including guidance on delegated decision-making and a clearer understanding of the roles and responsibilities of sponsoring States and flag States (see para. 10 below), would provide further clarity in the regulatory text and implementation ([ISBA/25/C/18](#), para. 7).

10. The need to further clarify the roles and responsibilities of the various regulators (e.g. the Authority, sponsoring States and flag States) continued to be emphasized. It was suggested to specifically state in the regulations that no new obligations would be created for States parties that were not acting as sponsoring States. It is noted that the study on the interface of competencies between the Authority and the International Maritime Organization is available on the Authority's website.² In this connection, the Commission will continue to consider whether the approach taken in draft regulation 30 is sufficient at this stage and to make recommendations to the Council in relation to the content of annex VI to the draft regulations concerning a health and safety plan and a maritime security plan.

11. The timelines set out in the draft regulations continued to be a focus of comments, with different views expressed on the duration and extension periods of contracts, as well as comments made that some timelines were missing in certain regulations, while existing timelines might be too long or, given the potential complexity of documentation review processes, certain prescribed periods might be too short, including in the light of the meeting schedules of decision-making organs. A suggestion was made to include a provision allowing the Secretary-General to grant

² Available at www.isa.org.jm/document/competencies-isa-and-imo.

the extension of a time frame, subject to certain conditions. It is noted that the issue of timelines is still under review by the Commission and the Council (ISBA/25/C/18, para. 6).

12. The need to provide opportunities for public consultations at the various stages of the approval and renewal processes for the plan of work continued to be stressed.

13. The importance of protecting contractors' rights and ensuring the stability of exploitation contracts and of the regulations was emphasized, with concerns expressed that the current text of the regulations allowed the Authority to change the regulations and that certain provisions defeated the principle that the contract may be revised only with the consent of the contractor and the Authority.

14. Requests were made to further review the fees imposed under the regulations, with concerns expressed regarding costs to the contractors and the overlap of payments of exploration and exploitation fees.

15. While suggestions were made to specifically indicate that the regulations apply to polymetallic nodules, polymetallic sulphides and ferromanganese crusts, in other submissions it was suggested that the regulations should better take into account the differences in the exploitation of those minerals.

16. The importance of capacity-building for developing countries was emphasized, with a suggestion that the regulations be accompanied by a clear and measurable work plan to strengthen capacity and transfer technology.

B. Key thematic issues requiring further attention

17. In addition to the general observations above and to matters concerning financial aspects (see para. 3 above), the key thematic areas set out below emerged from the submissions as requiring further attention.

1. Protection and preservation of the marine environment

18. It was generally recognized in the submissions that further work was required concerning the provisions of the regulations related to the protection of the marine environment to ensure the highest possible environmental standards. This included further consideration of how to better operationalize such principles and approaches as the polluter pays principle, the precautionary approach/principle and an ecosystem approach; the review of contractors' compliance with environmental obligations; providing for the possibility of relying on independent expertise at the various stages of the process, including in monitoring and environmental assessments; and matters related to the role and status of regional environmental management plans.

19. In particular, with regard to regional environmental management plans, while it was emphasized in some submissions that the provisions of such plans should be binding and that fully developed and agreed plans should be made a condition for the approval of plans of work, in other submissions it was noted that the plans were non-legally binding policy instruments, and it was stressed that the modalities of the plans should be clarified and agreed before considering whether and how to include specific language on regional environmental management plans in the regulations.

20. In addition to those issues, the priority of developing standards or guidelines related to the marine environment, including for environmental impact assessments, the preparation of environmental impact statements, environmental management and monitoring plans and closure plans, was emphasized in the submissions. Suggestions were made that all matters related to environmental protection should be set out in standards. It was noted, however, that the relationship between environmental

standards, environmental management systems, environmental impact statements and environmental management and monitoring plans (draft regulations 45 to 48) required further clarification, including with regard to content, output, workflow and the primary implementing entity. It is noted that the Commission has established a technical working group tasked with undertaking the necessary work on environmental impact assessments, environmental impact statements and environmental management and monitoring plans for consideration at its meetings during the twenty-sixth session of the Authority, in accordance with the schedule for the development of guidelines under phase 1 ([ISBA/25/C/19/Add.1](#), enclosure I).

21. Suggestions were made to develop a manual for the monitoring and assessment of activities before, during and after the exploitation phase, including detailed methodologies for the establishment of environmental baselines. It is noted that the Commission has tasked a technical working group with undertaking the necessary work on the expected scope and standard of baseline data.

22. Concerns were expressed regarding the lack of consideration of climate change in the draft regulations, and suggestions were made to address that issue. A requirement to assess cumulative effects was also suggested.

2. Inspection, compliance and enforcement

23. In the submissions, the critical importance of ensuring that the Authority can review contractors' compliance with their obligations and apply appropriate penalties was generally emphasized. In that context, the need to give careful consideration to a number of aspects was highlighted, including the rights, obligations and responsibilities of all actors concerned in inspection activities; how the costs of an inspection mechanism would be borne by the Authority, contractors and/or sponsoring States; matters related to the establishment, composition, functions and conduct of a team of inspectors; the scope of inspection activities; and the criteria for triggering an inspection. A suggestion was made to develop rules and procedures for an inspection mechanism. It was also suggested that an inspection mechanism should be established before the onset of any exploitation activity. Attention was drawn to the merits of considering the experience of similar schemes in the context of the oil and gas industries and regional fisheries management organizations. The need for the inspection regime to be consistent with the exclusive jurisdiction of the flag State over its vessels on the high seas was noted. A proposal was made to establish a compliance committee.

3. Responsibility and liability

24. In several submissions, attention was drawn to the need to address issues concerning the responsibility and liability of various actors for ensuring that exploitation is undertaken in a safe and environmentally responsible manner. In particular, the issues raised included the liability of the various actors involved in cases of environmental harm; the exclusion of liability of a contractor for force majeure, and concerns about the potential impact of such clauses on the Authority and States; and matters related to the environmental compensation fund, including the purpose, modalities and legal status of such a fund, with concerns expressed regarding the use of such a fund for research and training purposes.

4. Recourse to independent expertise

25. The importance for the organs of the Authority, at their discretion, to invite independent experts to provide advice on specific matters, bearing in mind the need for consistency with the provisions of the Convention, was noted in some submissions. The need to further consider the mechanism for the provision of such

expertise, the types of expertise required and the role and selection of experts was noted. The Commission has also previously commented on some of these issues (ISBA/25/C/18, paras. 14 and 15; see also [ISBA/25/C/10](#)).

5. Other issues

26. Matters related to the Enterprise were raised, including the development of clear conditions, standards and procedures concerning joint ventures that would address, inter alia, their nature and legal status, the laws applicable to joint ventures and equity participation in joint ventures. It was emphasized that the Enterprise should be fully operational before the adoption of the exploitation regulations.

27. Among the other issues raised, the need to further clarify the provision on reasonable regard for other activities in the marine environment was noted in a number of submissions. Some submissions also included a suggestion of further consideration of the provisions of the regulations on the termination of sponsorship, the transfer of rights and obligations and change of control.

28. The issue of test mining was also raised, with suggestions that licensed and successful test mining be required for the approval of a plan of work and that the conditions, requirements and procedures under which test mining is to be conducted should be set out in a separate set of regulations.

29. In some submissions, the importance of adaptive management and of incorporating adaptive management principles in the draft regulations was emphasized. Suggestions were made to develop criteria and procedures for adaptive management to modify approved plans of work should new information arise concerning damage, areas of particular environmental importance or new technologies.

30. The provisions on the confidentiality of information drew a number of comments, with suggestions to further clarify what data and information are confidential by setting criteria or specifying which minimum data and information must be shared, including in relation to information to be published in the Seabed Mining Register.

III. Way forward

31. In anticipation of the twenty-sixth session of the Authority, the President of the Council during its twenty-fifth session, in a letter dated 22 November 2019, transmitted to the representatives of the members of the Council a briefing note regarding a way forward to develop the regulations on the exploitation of mineral resources in the Area at the twenty-sixth session of the Council, in which she proposed the establishment of one or two additional informal open-ended working groups of the Council with a mandate to facilitate the negotiation of the more complex issues related to the protection and preservation of the marine environment, mostly in part IV, as well as the related annexes, appendices and terms in the schedule; and in part XI, on the inspection mechanism, compliance and enforcement, as well as the related annexes, appendices and terms in the schedule.

32. In support of the discussions of the Council and the work to be carried out by the Commission concerning the regulations and the necessary associated standards and guidelines, and in accordance with the schedule for the development of guidelines under phase 1 proposed by the Commission, the background documentation set out below will be made available by the secretariat in the course of the twenty-sixth session.

33. On the basis of a request made by the Council in 2019, the secretariat, with the assistance of experts from the Massachusetts Institute of Technology, is developing a revised economic model, including a progressive ad valorem royalty, for consideration at the next meeting of the open-ended informal working group of the Council, to be convened on 13 and 14 February 2020.

34. The secretariat will also make available to the Council, for information purposes, a background study on the roles and responsibilities of the Authority and sponsoring States.

35. Studies and background notes will also be made available to the Commission in due course, including in response to its requests ([ISBA/25/C/18](#) and [ISBA/25/C/19/Add.1](#)), concerning the following:

- (a) A gap analysis of existing and relevant international or national standards and guidelines;
- (b) The application of health and safety management systems, including a review of existing international labour and health standards and of the interface of competencies of the Authority and the International Labour Organization;
- (c) Insurance requirements under an exploitation contract and placing of insurance risk;
- (d) Use of an exploitation contract as security;
- (e) The environmental compensation fund, including the rationale, purpose and funding of such a fund, and how to ensure the adequacy of funding;
- (f) Remote monitoring technology;
- (g) The potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals.

36. The secretariat has also undertaken to advance work to develop the draft text of standards and/or guidelines for the following:

- (a) The preparation and assessment of an application for the approval of a plan of work for exploitation (draft regulations 7, 13–16, 25 and annexes I–III);
- (b) The development and application of environmental management systems (draft regulation 46 and annex VII);
- (c) Tools and techniques for hazard identification and risk assessment;
- (d) The safe management and operation of mining support vessels (draft regulations 30 and 32);
- (e) The form and calculation of an environmental performance guarantee (draft regulation 26);
- (f) The preparation and implementation of emergency response and contingency plans (draft regulations 33 and 53 and annex V).

Annex

Matters arising from specific regulatory text

Part I

1. **Draft regulation 1 (Use of terms and scope).** Suggestions were made that the terms used in the regulations should have the same meaning as those in the United Nations Convention on the Law of the Sea, the Agreement relating to the Implementation of Part XI of the Convention and the rules, regulations and procedures of the International Seabed Authority, with concerns expressed that the generic reference to the “Rules of the Authority” was not accurate, including in the light of the definition of that term in the schedule.

2. **Draft regulation 2 (Fundamental policies and principles).** Concerns were expressed regarding the fact that this draft regulation does not include a distinction between those elements which are policies and those which are principles and that it also includes elements that may be considered to be approaches. Inconsistencies with article 150 of the Convention were also stressed. The need to define or further clarify some of the policies, principles and approaches listed was also noted. In particular, a number of suggestions were made regarding the formulation of the polluter pays principle (draft regulation 2 (e) (iv)). Suggestions were also made to strengthen the references to certain elements, including effective public participation (e.g. draft regulation 2 (e) (vii)), and to include additional elements.

3. **Draft regulation 3 (Duty to cooperate and exchange of information).** In the submissions, concern was generally expressed about the qualifier “use their best endeavours to” in this draft regulation and throughout the text, and it was noted that this weakened the relevant obligations, including that of cooperation. The need to further clarify the scope of what constitutes data and information that are “reasonably necessary” and the modalities for providing that information were noted, with suggestions that guidelines be developed in that regard.

4. **Draft regulation 4 (Protection measures in respect of coastal States).** The submissions sought to elaborate on the notification and consultation mechanisms and set out more clearly the roles and responsibilities of the various organs of the Authority. Suggestions were made concerning procedures to notify and consult with coastal States regarding potential and actual serious harm; the modalities of the issuance of emergency orders and compliance notices; and matters relating to compensation measures in cases where serious harm cannot be contained or mitigated or the marine environment rehabilitated. Support was expressed for the development of guidelines for the assessment of what constitutes serious harm to the marine environment, and concerns were expressed that serious harm was too high a threshold. It is noted that the Legal and Technical Commission has recommended that guidelines be put in place to address a number of those issues ([ISBA/25/C/18](#), para. 11). In relation to the evidential standard for “clear grounds” to believe that serious harm is likely to occur, suggestions were made that standards rather than guidelines, or both, be developed in that regard.

Part II

5. **Draft regulation 5 (Qualified applicants).** Submissions highlighted the need for the applicant to demonstrate both the technical and economic capacity to undertake exploitation in the Area. Suggestions were made to reinsert a provision to the effect that an application for a plan of work would not be accepted for persons who had previously conducted unauthorized activities. The need to clarify the notion

of effective control in this draft regulation and throughout the text was emphasized, as was the need to clarify the term “competent authority” in relation to the Enterprise.

6. **Draft regulation 7 (Form of applications and information to accompany a plan of work).** Concerns were expressed about the undertaking to comply with national laws, regulations and administrative measures in draft regulation 7 (2) (d) for different reasons. The point was made that the current version of this provision might allow a situation where a contractor – when sponsored by more than one State – would have to comply with national laws, regulations and administrative measures that, albeit consistent with the Convention, might be incompatible with one another. It was also noted that the determination of compliance with such laws, regulations and measures was a matter for the sponsoring State to decide, not for the Authority. Suggestions for additional information to be provided with a plan of work were made. The possibility for the Commission not to approve an application, should the information provided not be considered adequate, was also suggested.

7. **Draft regulation 10 (Preliminary review of application by the Secretary-General).** Where the Secretary-General is from the sponsoring State, it was suggested that consideration should be given to some form of provision to avoid a real or perceived conflict of interest. In the submissions, the need to clarify matters concerning the determination of an applicant’s preference and priority, including the competent organ of the Authority to do so, was noted.

8. **Draft regulation 11 (Publication and review of the environmental plans).** Suggestions were made to clarify the review process and increase openness and transparency in the process, including by requiring that the Commission provide rationales for its recommendations, addressing conflicts of interest and providing for the possibility for the Commission to call on independent experts in carrying out its assessment.

9. **Draft regulation 12 (General).** Clarification was sought on the reference to “independent competent persons”, and it was noted that different terms were used throughout the draft regulations, such as “recognized experts”, “other experts” and “independent scientists”. In particular, questions arose as to how they differed from each other, who would be considering and selecting those individuals and where lists of such persons would be made available.

10. **Draft regulation 13 (Assessment of applicants).** Additional criteria for assessing applicants were suggested, including in relation to the protection of the marine environment, consultation with users conducting other activities in the marine environment, in particular the laying of submarine cables, and records of the past performance of applicants. It was suggested that the draft regulation provide for an assessment of compliance with the fundamental principles (draft regulation 2). The importance for the applicant to fulfil the criteria at the time of application, not in the future, was emphasized. Clarifications were sought on the obligations owed by the applicant to the Authority in draft regulation 13 (1) (d) and on the notion of “key environmental parameters” in draft regulation 13 (3) (b). Inconsistencies between the title of the draft regulation and its content were noted in the light of the fact that the draft regulation also includes matters related to the assessment of the application.

11. **Draft regulation 15 (Commission’s recommendation for the approval of a plan of work).** It was emphasized in a number of submissions that a plan of work should not be approved if it did not demonstrate effective protection of the marine environment. In that regard, suggestions were made to provide greater discretion to the Commission in refusing to approve a plan of work or approving it with conditions, including following an assessment against the fundamental principles set out in draft regulation 2.

12. **Draft regulation 16 (Consideration and approval of plans of work).** Issues related to conflicts of interest were raised, with a suggestion to consider whether members of the Council who represent sponsoring States should have to recuse themselves owing to potential conflicts of interest. The need to specify a procedure for disputes concerning a decision of the Council disapproving a plan of work and to include a means of settling disputes was noted, with a suggestion to add a reference to paragraph 12 of section 3 of the annex to the 1994 Agreement, in addition to paragraph 11.

Part III

13. **Draft regulation 18 (Rights and exclusivity under an exploitation contract).** Suggestions were made to clearly state in this regulation that marine scientific research would not be impeded by a contractor's exclusive rights. Clarification was sought on the modalities to ensure that, if a contract relates to the exploitation of one category of resources, the contractor does not extract another category of resources. Clarification was also sought on the reference to the "relevant Guidelines" in paragraph 7.

14. **Draft regulation 19 (Joint arrangements).** Suggestions were made to establish clear conditions for the joint arrangements by stating the specific conditions for such arrangements with the Enterprise.

15. **Draft regulation 20 (Term of exploitation contracts).** This draft regulation drew a number of comments concerning the renewal process and timeline. In particular, a greater level of scrutiny of renewal applications was sought, including through not only the review of the contractor's environmental and regulatory performance, but also any other relevant information. On the other hand, it was argued that a contractor should not have to justify its wish to extend an exploration contract, as long as it met all regulatory requirements. Some submissions indicated a preference for the entire plan of work to be reviewed at the point of renewal and for the inclusion of a provision allowing the Authority to review a contractor's decision on whether a change constitutes a material change. It was suggested that environmental grounds be included among the reasons for the Council to disapprove a renewal. Suggestions were also made to establish a maximum exploitation time for an area by a contractor, such as the period of the initial contract plus two renewals or a maximum overall duration of the exploitation contract of 60 years.

16. **Draft regulation 21 (Termination of sponsorship).** The need to specify when the termination of sponsorship would take effect was emphasized. In that context, concerns were expressed that a reasonable period of time must be allowed to obtain a new sponsoring State given the practical and legal steps required to obtain sponsorship. It was suggested that termination of sponsorship should lead to the termination, or at least the suspension, of a contract. Suggestions were made to reinsert a former provision setting out that the contractor would not be relieved from any obligation or liability and would remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of termination of sponsorship.

17. **Draft regulation 22 (Use of exploitation contract as security).** Concerns were expressed regarding the practicality of some of the requirements set out in this draft regulation, including the requirement that the beneficiary of an encumbrance undertake exploitation activities in the event of foreclosure. It was suggested that the Commission examine whether means in addition to those set out in regulation 22 exist to ensure that the beneficiary is in a position to undertake the exploitation activities in conformity with the contract. While some submissions sought a greater level of

scrutiny by the organs of the Authority in the context of this draft regulation, it was noted, on the other hand, that the granting of the right to exploit should also include the legal right to treat the exploitation contract as a normal financial asset as long as the third party was willing to accept all of the obligations imposed on the contractor; thus, the contractor should be obliged to inform all authorities and States involved of the change but should not require consent. Concerns were also expressed about the timing for gaining approval from the Council. The need to clarify the phrases “any internationally adopted standards for the extractive industries” and “properly regulated through a national financial conduct authority” in paragraph 4 (a) and (b) was noted in order to avoid legal uncertainty. It is noted that the Commission will further consider this issue ([ISBA/25/C/18](#), para. 19).

18. Draft regulation 23 (Transfer of rights and obligations under an exploitation contract). Suggestions were made that the transfer of rights should not require consent but rather a review by the Commission to ensure that the transferee meets all regulatory requirements, or that the Secretary-General should be allowed to authorize the transfer. The need to specify the criteria for not recommending the approval of the transfer under an exploitation contract for polymetallic sulphides and cobalt-rich ferromanganese crusts was noted in the light of the fact that article 6 (3) (c) of annex III to the United Nations Convention on the Law of the Sea addressed only polymetallic nodules. Issues were raised concerning the definition of a “material change” and the threshold for a change to be considered material. Clarification was sought concerning the legal nature and effect of the Seabed Mining Register in the light of the condition that, under the current draft regulation, the transfer would be validly effected only upon its recording in the Register.

19. Draft regulation 24 (Change of control). In the submissions, the need for further work on this draft regulation was noted, including in the light of the fact that a change of control could occur with less than a 50 per cent change in ownership and that a change of control might further lead to a change of the sponsoring State. Suggestions were made to provide for some role for the Council in reviewing a change of control. A concern was expressed with regard to treating a change of control as a transfer of rights and obligations, and a suggestion was made to elaborate further on how the transfer of rights and obligations provisions would be applied to a change of control.

20. Draft regulation 25 (Documents to be submitted prior to production). Clarification was sought on how the Secretary-General could/would assess the comprehensiveness of the feasibility study and determine the actual content of a material change. Suggestions were made to provide for a role for the Commission at the beginning of such an assessment. The need for the annexes to more clearly define the necessary elements of an economic scoping study and feasibility study was noted.

21. Draft regulation 26 (Environmental performance guarantee). Submissions drew attention to the need to address a number of aspects related to the environmental performance guarantee, including its scope, purpose and modalities, as well as the modalities of the repayment or release of the guarantee. Suggestions were made that the Finance Committee study the calculation method and the ceiling of the guarantee and make relevant recommendations to the Council, and that the form and amount of the guarantee be set out in standards rather than guidelines. It is noted that the Commission had previously considered that further discussion with relevant stakeholders was required in order to advance the content of this draft regulation ([ISBA/25/C/18](#), para. 21).

22. Draft regulation 30 (Safety, labour and health standards). It was noted that the level of safety regulation in this draft regulation was insufficient and not commensurate with the risks of the high-hazard offshore industry. Aspects that

required further consideration included the identification of hazards and the assessment of risks, measures to eliminate and control risks, monitoring, audit, review and continuous improvement, and safety management systems. The need to clarify and further discuss the reference to “relevant international shipping conventions” was also stressed. It is noted that the Commission has requested that the secretariat continue to explore these issues and report to the Commission ([ISBA/25/C/18](#), para. 24).

23. Draft regulation 31 (Reasonable regard for other activities in the marine environment). Comments focused on the interpretation of the “reasonable regard” obligation, and suggestions were made on how to operationalize it in the draft regulation. The elaboration of guidelines was suggested in that regard. On the other hand, it was also noted that reasonable regard obligations were obligations among States parties to the Convention and that it was not within the power of the Authority to regulate such matters.

24. Draft regulation 35 (Human remains and objects and sites of an archaeological or historical nature). The need to consider compensating the contractor should it be decided that exploration and exploitation activities must be discontinued as a result of this regulation was noted. In some submissions, attention was drawn to the fact that the United Nations Educational, Scientific and Cultural Organization might not be the only competent organization in the context of this draft regulation, including in the light of the requirements under the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the 1996 Protocol thereto.

25. Draft regulation 36 (Insurance). Clarifications were sought on a number of matters related to insurance, including the types of insured risks, the risks for which the Authority would be insured as an additional assured, the situations covered by the waiver of rights of recourse, and whether the responsibility or liability of the Authority for any damage arising out of wrongful acts in the exercise of its powers and functions would be covered by the insurance of the contractor. The Commission had previously noted that no further action could be taken on this draft regulation until the secretariat completed its review of insurance requirements and availability in the marketplace ([ISBA/25/C/18](#), para. 25).

Part IV

26. Draft regulation 44 (General obligations). In addition to the need to clarify a number of phrases and terms, such as “ensuring effective protection for the marine environment”, “harmful effects”, “damage to the marine environment”, “precautionary approach”, “risk assessment”, “risk management” and “response measures”, submissions indicated the need for greater clarity on the respective roles and responsibilities of the Authority, sponsoring States and contractors in this draft regulation, as previously noted by the Commission ([ISBA/25/C/18](#), para. 26). The importance of identifying common understandings of “Best Available Techniques,” “Best Environmental Practices,” “Best Available Scientific Evidence” and “Good Industry Practices” in the relevant guidelines was also noted.

27. Draft regulation 46 (Environmental management system). In the submissions, the need to clarify certain aspects related to environmental management systems was pointed out, including defining the term, clarifying the content of such a system and who would develop it, and setting out how it would differ from other related concepts, such as “environmental management and monitoring plan”, “regional environmental management plan” and “environmental impact assessment”. The Commission had previously indicated that the details of such a system, together

with relevant benchmarks and principles, should be set out in guidelines (ISBA/25/C/18, para. 28). Suggestions were made that a standard be issued instead.

28. **Draft regulation 47 (Environmental impact statement).** Bearing in mind that the Commission has recommended the priority development of guidelines and standards for environmental impact assessments and the preparation of environmental impact statements, the submissions addressed the need for the regulations and/or legally binding standards to address certain minimum aspects of an environmental impact assessment, such as the steps of an environmental impact assessment; the roles of the applicant or contractor, the Authority and the sponsoring State in the preparation, assessment and approval process for such assessments; the provision of public consultations on draft assessments as part of the approval process and the public availability of assessments once approved; a requirement to consult with relevant coastal States; a possibility for the Commission to require that certain conditions relating to the mitigation of environmental impacts be included in environmental management and monitoring plans; and specifying the minimum requirements for baseline data. Clarification was sought from the Commission on whether the environmental impact assessment at the exploration phase could not be considered to fulfil the screening and scoping process under paragraph 1 (b) of this regulation, and whether the procedures were compatible with each other.

29. **Draft regulation 48 (Environmental management and monitoring plan).** Suggestions were made concerning the content and review procedure for the plan. Clarifications were sought on the required environmental quality objectives and standards to be met, how to ensure compliance with the plan and the relationship between the environmental management and monitoring plan and regional environmental management plans.

30. **Draft regulation 50 (Restriction on mining discharges).** Further scientific research on the specific discharges resulting from the processing of the various minerals was noted as a precondition to further consider this draft regulation. Suggestions were made to develop guidelines on this issue, including with a view to avoiding asymmetrical obligations between parties to the London Convention and its Protocol and non-parties thereto.

31. **Draft regulation 52 (Performance assessments of the environmental management and monitoring plan).** It was noted that the Authority, through independent experts, should conduct the performance assessments of the environmental management and monitoring plan, not the contractor. A suggestion was made to spell out the instances of reasonable grounds for presuming that the performance assessment of the contractor would be unsatisfactory in paragraph 6 of this draft regulation.

32. **Section 5 (Environmental compensation fund).** There was a general sentiment that the purpose of such a fund should be restricted to that put forward by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea in its advisory opinion of 1 February 2011 in relation to an environmental liability gap that may arise. Clarifications were sought on several aspects of the fund, including who would administer it, who would be able to seek compensation from the fund, the modalities of operation, as well as how the fund would be replenished and the optimum level of funds. Suggestions were made to establish other funds to finance research and training. Connections to the closure plan were also drawn. In response to the Commission's request for the secretariat to reflect on the discussions relating to this topic, with a view to advancing the rationale, purpose and funding of such a fund, and on how to ensure the adequacy of funding (ISBA/25/C/18, para. 31), a study will be made available in due course.

Part V

33. **Draft regulation 57 (Modification of a plan of work by a contractor).** It was suggested that the Secretary-General be supported by independent external experts in the task of determining whether a proposed change to a plan of work constitutes a material change. On other hand, preference was also expressed for the Council to make that determination. A suggestion was made that standards be developed to define and specify what would be considered a material change.

Part VI

34. **Draft regulation 59 (Closure plan).** Suggestions were made to strengthen this draft regulation, including through an obligation to implement management responses or demonstrate the capacity to implement them, by deleting references to cost-effectiveness and by including an obligation to remove all equipment and installations from the Area. Clarifications were sought on the terms “residual and natural environmental effects” and “necessary health and safety requirements”.

35. **Draft regulation 61 (Post-closure monitoring).** The need to determine the procedure to be followed in case the contractor does not comply with the closure plan or in case the actions contemplated in the closure plan do not deliver the desired results was stressed.

Part VIII

36. **Draft regulation 85 (Annual fixed fee).** Clarifications were sought on the annual fixed fee and on the term “commercial production”. The Commission had previously noted that this matter required further discussion ([ISBA/25/C/18](#), para. 33).

Part IX

37. **Draft regulation 89 (Confidentiality of information).** The need to further clarify what constitutes confidential information was noted, as was the need to ensure consistency between the duration of a contract and that of confidentiality, with a suggestion that confidentiality should be kept throughout the duration of a contract unless the contractor indicated otherwise. Other views questioned the retention as confidential of information concerning the environment for over two years or for academic reasons. On the other hand, it was noted that the current drafting of paragraph 4 could limit the possibility of protecting confidential information by indicating that the consent of the contractor for the communication of such information could not be unreasonably withheld. Suggestions were made to establish an administrative procedure in case of objections to the designation of information as confidential.

38. **Draft regulation 90 (Procedures to ensure confidentiality).** The need to further specify a non-disclosure procedure for the members of the Council, in addition to procedures for the Commission and the secretariat, was noted.

Part X

39. This part drew a number of comments focused on specifying more clearly the legal nature of the standards and of the guidelines, with the former being legally

binding and the latter being recommendatory, as well as the organs of the Authority competent to develop and adopt them. Suggestions were made regarding issues to be developed through standards and through guidelines, as well as regarding the priority to be given to their development. Clarifications were sought and suggestions made concerning the procedures for review and stakeholder consultations. As also recommended by the Commission, the need for the expression “consistent with” to be used when referring to standards throughout the regulations, while guidelines could be “taken into account”, was stressed in submissions. It is noted that the Commission had recommended processes for the development of standards and guidelines, including a step to allow for stakeholder consultations and comments. The adoption of standards by the Council and their approval by the Assembly had been considered in the suggested process. In that regard, the Commission had recommended that draft regulation 94 be amended to reflect that standards should be approved by the Assembly ([ISBA/25/C/19/Add.1](#), paras. 20–22).

Part XI

40. The comments made in respect of part XI (Inspection, compliance and enforcement) indicate that further work is required on this part, including with a view to ensuring its consistency with the Convention. Some issues are highlighted in paragraph 23 above. These matters are under review by the Commission ([ISBA/25/C/18](#), para. 36).

Annexes

41. The annexes drew comments of an editorial nature and requests for clarification. Suggestions were made for additional annexes, including the reinsertion of an annex on the environmental scoping report, and new annexes on regional environmental management plans, test mining and an administrative procedure concerning the confidential nature of data and information. Suggestions were also made to split annex VI into two annexes: one on the health and safety management plan and one on the maritime security plan. With regard to the annexes related to environmental matters, the Commission had noted that guidelines would need to be prepared and had considered it more efficient to deal with comments raised in respect of those annexes when guidelines are developed ([ISBA/25/C/18](#), para. 39).

Schedule

42. A number of additional terms were suggested for the schedule, along with suggestions to redraft certain definitions with a view to further clarifying the terminology and concepts. It is noted that the issue of good industry practice is under review by the Commission ([ISBA/25/C/18](#), para. 40).