

Twenty-seventh session
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Item 11 of the agenda*
Draft regulations on exploitation of mineral resources in the Area

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Part I and Part II (partial) Regulations 1-5

Prepared by the Co-Facilitators, Ambassador Gina Guillén-Grillo (Costa Rica) and Ambassador Constanza Figueroa (Chile), of the Informal Working Group on Institutional Matters

1. During the twenty-sixth session of the Authority, the Council decided to establish three Informal Working Groups, with the mandate and working modalities set out in the annex to its decision (ISBA/26/C/11). In accordance with that decision, we were appointed as Co-Facilitators of the Informal Working Group on the Institutional Matters.
2. In the First Part of the twenty-seventh session, we started the conversation with a presentation setting out the mandate assigned to our informal working group and sharing what has been commonly understood by the concept “Institutional Matters”, raising some questions that could enrich the debate. A brief presentation was also made regarding the responsibilities and functions of the organs of the Authority.
3. During the discussion, the relevance of preparing a document that reflects the respective functions and responsibilities of each body of the authority and other relevant stakeholders was emphasized, and the facilitators agreed to prepare it.
4. The Informal Working Group also highlighted the importance of the operationalization of the Enterprise and the Economic Planning Commission.
5. The IWG decided that the issue of “Effective Control” needed to be discussed and analysed, so it was agreed that we would organize an intersessional webinar after the Second Part of the twenty-seventh Session.
6. Part I and Regulation 5 of Part II of the Draft Regulations were discussed and we invited delegations to send text proposals by April 30, 2022.

7. It was agreed during the meetings in March 2022 (ISBA/27/C/21), that we would prepare a proposed draft text for Regulations 1-5 of the Draft regulation on exploitation of mineral resources in the Area ('the Draft Regulations', ISBA/25/C/WP.1).

8. Based on the discussions and 13 proposals provided during the March 2022 session and 39 proposals received by 29 April 2022, we have prepared this text ("the Facilitators' Text") for Regulations 1 to 5 with the aim of assisting in the discussions in the Informal Working Group.

9. The revisions are reflected as marked-up text in blue. New proposals are included in red. When a paragraph was placed in a different part of the text, we kept the original text number, adding the new text number at the beginning of the paragraph, in green. We implemented the following approach to the revisions:

(a) Only those proposals in respect of which there has been no express opposition to are reflected as text. This is without prejudice to their future consideration or the possibility for delegations to re-introduce textual proposals not incorporated in the present text.

(b) Ideas that reflected a general direction in the discussions have been incorporated, although the precise textual formulations proposed by delegations may not always have been utilized. While not every individual idea or proposal is necessarily reflected, the text presented is an attempt at reflecting the general direction of those ideas and proposals.

(c) Where general comments were made but no drafting suggestions were provided or where several drafting suggestions were made going in a similar direction without being identical, we are proposing wording for the consideration of delegations.

(d) Square brackets are introduced for proposals for which conceptual discussion are expected and where further work might be requested by the Council. The absence of square brackets does not imply agreement on the ideas, content or specific language reflected in a provision. The absence of brackets around new ideas which are reflected for the first time in the draft text should not be taken as a *fait accompli* as to their inclusion. Equally, the fact that regulations have not been revised should not be taken to indicate agreement on the unrevised provisions.

(e) Options have been used throughout the text to present alternative conceptual approaches. The order in which options appear in the text should not be taken as indicating any suggested order of priority, nor as indication of the level of support for any particular option.

(f) Boxes are containing explanations of revisions, certain general proposals and/or our comments, where necessary, are included under the relevant articles or sections.

Preamble

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”),

Reaffirming the fundamental importance of the principle that the Area and its Resources are the common heritage of mankind,

Emphasizing that the Exploitation of the Resources of the Area shall be carried out for the benefit of mankind as a whole, on whose behalf the International Seabed Authority acts, in accordance with Part XI of the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Agreement”),

Considering that the objective of these regulations is to provide for the Exploitation of the Resources of the Area consistent with the Convention and the Agreement.

Part I Introduction

Regulation 1 Use of terms and scope

1. Terms used in these regulations shall have the same meaning as those in the Rules of the Authority.¹

Alt.1 Terms used in these regulations shall have the same meaning as those in the Convention, the Agreement, the existing Rules of the Authority and the relevant applicable international agreements

This Alt. takes into account the evolution of the definitions and terms in relevant international agreements, for example Antarctic Treaty, Paris Agreement on Climate Change, Convention on Biodiversity, etc.
The term “Rules of the Authority” is defined in the Schedule.

2. In accordance with the Agreement, the provisions of the Agreement and part XI of the Convention shall be interpreted and applied together as a single instrument. These regulations and references in these regulations to the Convention are to be interpreted and applied accordingly.

3. Terms and phrases used in these regulations are defined for the purposes of these regulations in the schedule.

Comments/Remarks

There was a proposal for the terms/definitions to be integrated under this regulation, instead of referring to the schedule “Use of terms and scope” at the end of the text.

This proposal can be considered by the plenary later when the full text, in particular the terms and definitions, are finalized.

4. These regulations shall not in any way affect the freedom of scientific research, pursuant to article 87 of the Convention, or the right to conduct marine scientific research in the Area pursuant to articles 143 and 256 of the Convention. Nothing in these regulations shall be construed in such a way as to restrict the exercise by States of the freedom of the high seas as reflected in article 87 of the Convention.

Alt 1. Nothing in these Regulations shall affect the rights, jurisdiction and duties of States under the Convention, including the right to conduct scientific research pursuant to articles 143 and 256 of the Convention, and the exercise by States of the freedom of the high seas, as reflected in article 87 of the Convention. These Regulations shall be interpreted and applied in the context of and in a manner consistent with the Convention.

A contractor suggested the following:

“There should be a similar confirmation that Marine Scientific Research (MSR) will not be permitted to be carried out in such a way as to cause damage or undue interference to a deep-sea mining operation. For example, MSR should not be permitted to operate in or disturb a Contractor’s Preservation Reference Zone, or interfere with the safe and orderly performance of the Contractor’s exploitation activities and commitments. (Is this regulated by the contract? For example, from the standard form of contracts:

2.2 The Contractor shall have the exclusive right to explore for polymetallic nodules in the exploration area in accordance with the terms and conditions of this contract. The Authority shall ensure that no other entity operates in the exploration area for a different category of resources in a manner that might unreasonably interfere with the operations of the Contractor. “

Consideration should be given to the fact that UNCLOS already established under art 87 that States have freedom to carry out MSR in the High Seas as long as they give “**due regard**” to ISA contractors. There is also art 147 that requires activities in the Area to be carried out with “**reasonable regard**” to other marine users.

5. These regulations are supplemented by Standards and Guidelines, as referred to in these regulations and the annexes thereto, as well as by further rules, regulations and procedures of the Authority, in particular on the protection and preservation of the Marine Environment.

Alt. 1. These regulations are accompanied by Standards and Guidelines, as referred to in these regulations and the annexes thereto, as well as by further rules, regulations, procedures, and Regional Environmental Management Plans, as may be adopted by the Authority from time to time, in particular on the protection and preservation of the Marine Environment. The annexes, appendices, schedule, and standards and guidelines to these regulations form an integral part of the regulations and any reference to the regulations includes the annexes, appendices, schedule, and standards and guidelines thereto. Standards are equally binding than the Regulations.

~~6. The annexes, appendices and schedule to these regulations form an integral part of the regulations and any reference to the Regulations includes the annexes, appendices and schedule thereto.~~

Comments/Remarks

It is proposed to merge paragraphs 5 and 6.

New 6 (7). These regulations are subject to the provisions of the Convention and the Agreement and other rules of international law not incompatible with the Convention.

Proposal for a new regulation: Number 7:

7. These regulations shall be applied to all members of the Authority, the Enterprise and Contractors, as applicable, in a uniform and non-discriminatory manner.

Regulation 2

Fundamental policies and principles

Alt 1 Fundamental Principles, approaches and relevant policies

Comments/Remarks

It was suggested to include the following as Reg 2: “These Regulations, and any decisions or activities undertaken under them, must be implemented in conformity with the Convention, other relevant international agreements, and in pursuance of the Authority’s production policy, environmental policy, sustainability policy, accountability policy, and the Authority’s strategic objectives”

In furtherance of and consistent with Part XI of the Convention and the Agreement, the fundamental policies and principles of these regulations are, inter alia, to:

Alt. 1. In furtherance of and consistent with Part XI of the Convention and the Agreement, these Regulations, and any decision-making thereunder, shall be implemented in conformity with, inter alia, the following Fundamental Principles and approaches, and relevant policies:

(a) Recognize that the rights in the Resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;

Alt. 1 The Area and its resources are the Common Heritage of Mankind, and as such the rights in the Resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;

Proposal for a new letter b)

(b) Activities shall not be authorized in the Area unless it can be demonstrated that there will be effective protection for the marine environment from harmful effects; that the living marine resources of the Area will be protected; that they will not cause damage to the flora and fauna; that there will be no loss of biodiversity; that rare or fragile ecosystems and their habitat will not be depleted, threatened or endanger species; that other forms of marine life will be protected; and that there will be no interference with marine ecosystems, their resilience, with ecosystem services, or other harmful effects.

New c) e) Provide, pursuant to article 145 of the Convention, for the effective protection of the Marine Environment from the harmful effects which may arise from Exploitation, in accordance with the Authority's environmental policy, including regional environmental management plans, based on the following principles:

Alt. 1 Ensure the implementation of article 145 of the Convention, in order to provide the effective protection and preservation of the Marine Environment from harmful effects which may arise from Exploitation and related activities, in accordance with the Authority's environmental policy, including by the adoption of regional environmental management plans, standards and guidelines, based on the following Fundamental Principles and approaches:

(i) A fundamental consideration for the development of environmental objectives shall be the effective protection of the Marine Environment, including biological diversity and ecological integrity;

Alt 1. A fundamental condition for the approval of a plan of work shall be that the plan of work is sufficient to ensure the effective protection and conservation of the Marine Environment, including its ecological balance, biological diversity and ecological integrity;

(ii) The application of the precautionary approach, as reflected in principle 15 of the Rio Declaration on Environment and Development;

Alt. 1 Ensure the effective application of the precautionary approach/principle.

Alt. 2 Ensure the effective application of the precautionary approach, as reflected inter alia, in principle 15 of the Rio Declaration on Environment and Development and Article 6 of the UN Fish Stocks Agreement through-out all planning, management and decision-making processes in order to protect and preserve the marine environment.

(iii) The application of an ecosystem approach;

Alt. 1 Ensure the effective application of an Ecosystem Approach

Alt. 2. The application of an ecosystem approach, as reflected, inter alia, in the Convention on Biological Diversity, COP 5 Decision V/6

(iv) The application of "the polluter pays" principle through market-based instruments, mechanisms and other relevant measures;

Alt. 1. Ensure the effective application of "the polluter pays" principle as contained, inter alia, in principle 16 of the Rio Declaration on Environment and Development, (through market-based instruments, mechanisms and other relevant measures);

Alt. 2. Ensure the effective application of "the polluter pays" principle through regulatory mechanisms, including standards and guidelines, market-based instruments, mechanisms and other relevant measures;

(v) Access to data and information relating to the protection and preservation of the Marine Environment;

Alt. 1 Ensure transparency through access to data and information relating to the protection, conservation and preservation of the Marine Environment;

Alt 2 Access to data and information relating to the protection and conservation and, where practicable, restoration of the Marine Environment;

(vi) Accountability and transparency in decision-making; and

Alt. 1. Accountability and transparency in all processes, including, inter alia: administration, decision-making, implementation, monitoring, reporting, compliance.

(vii) Encouragement of effective public participation;

Alt. 1 Ensuring public participation including by Indigenous Peoples and local communities

Proposal of a new (viii)

viii) Identification of areas of particular environmental interest.

New d) (f) Provide for the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline;

Alt. 1. Provide for the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as-but not limited to- drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities.

New e) g) Incorporate the Best Available Scientific Evidence into decision-making processes.

Alt. 1. Incorporate the Best Available Scientific Evidence, Best Environmental Practices, Best Available Techniques and Good Industry Practices into decision-making processes. In case where no sufficient scientific information is available to enable informed decisions, the precautionary approach/principle shall be applied.

New f) h) Ensure the effective management and regulation of the Area and its Resources in a way that promotes the development of the common heritage for the benefit of mankind as a whole; and

Alt. 1. Ensure the effective management and regulation of the Area and its Resources in accordance with the principle of common heritage of mankind.

New g) b) Give effect to article 150 of the Convention by ensuring that activities in the Area shall be carried out in such a manner as to foster the healthy development of the world economy and the balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing States, and with a view to ensuring:

Alt. 1 Ensure that activities in the Area shall be carried out in accordance with the policies stated under article 150 of the Convention.

- (i) The development of the Resources of the Area;
- (ii) Orderly, safe and rational management of the Resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation, the avoidance of unnecessary waste;
- (iii) The expansion of opportunities for participation in such activities consistent, in particular, with articles 144 and 148 of the Convention;
- (iv) Participation in revenues by the Authority and the transfer of technology to the Enterprise and developing States as provided for in the Convention and the Agreement;
- (v) Increased availability of the minerals derived from the Area as needed in conjunction with minerals derived from other sources, to ensure supplies to consumers of such minerals;
- (vi) The promotion of just and stable prices remunerative to producers and fair to consumers for minerals derived both from the Area and from other sources, and the promotion of long-term equilibrium between supply and demand;
- (vii) The enhancement of opportunities for all States Parties, irrespective of their social and economic systems or geographical location, to participate in the development of the resources of the Area and the prevention of monopolization of activities in the Area;
- (viii) The protection of developing countries from serious adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected Mineral or in the volume of exports of that Mineral, to the extent that such reduction is caused by activities in the Area;
- (ix) The development of the common heritage for the benefit of mankind as a whole; and
- (x) That conditions of access to markets for the imports of minerals produced from the resources of the Area and for imports of commodities produced from such minerals shall not be more favourable than the most favourable applied to imports from other sources.

New h) c) Ensure that the Resources of the Area are exploited in accordance with sound commercial principles, and that Exploitation is carried out in accordance with Good Industry Practice;

Alt 1. Ensure that where exploitation is authorized, the Resources of the Area are exploited in accordance with sound commercial principles, and

that Exploitation is carried out in accordance with Best Industry Practice while adopting sustainable and socially responsible policies;

Proposal for a new i):

i) Give effect to article 142 of the Convention by ensuring that activity in the area shall be conducted with due regards to rights and legitimate interests of any coastal state a cross/ adjacent whose jurisdiction such deposits lie, and with a view to ensuring:

a) Consultation, including a system of prior notification to be maintained with coastal state concerned to avoiding infringement of such rights and interests;

b) Neither the principles, approaches and policies or provisions in the regulation shall affect the rights of coastal state to take such measures consistent with relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interest from pollution or threat thereof or from hazardous occurrences resulting from or caused by any activities in the Area.

New j) d) Provide for the protection of human life and safety;

Alt. 1. Provide for the protection of human and non-human life and safety;

~~i) — Ensure that these regulations are implemented, and any decision-making thereunder are conducted, in conformity with these fundamental principles and policies.~~

Comments/remarks

It is proposed to delete this paragraph since it is already indicated on the heading of this article.

New k) Conflicts of Interest

k) Member States, Sponsors, Contractors, and the Authority shall ensure public trust and regulatory integrity, and shall not engage on decisions in which they have a clear conflict of interest or that could be perceived as such.

Regulation 3

Duty to cooperate and exchange of information

In matters relating to these regulations:

(a) Members of the Authority and Contractors shall use their best endeavours to cooperate with the Authority to provide such data and information as is reasonably necessary for the Authority to discharge its duties and responsibilities under the Convention;

Alt 1. Members of the Authority, the Enterprise and Contractors shall cooperate with the Authority to provide such data and information necessary for the Authority to discharge its duties and responsibilities under the Convention;

Alt. 2. Members of the Authority, the Enterprise and Contractors shall cooperate with the Authority to provide such data and information upon the request by the Secretary-General in writing with an explanation that such data and information is necessary for the Authority to discharge its duties and responsibilities under the Convention.

Comments/Remarks

There was a proposal to include the following text:

“This provision shall be applied to all members of the Authority and Contractors in a uniform and non-discriminatory manner”.

In this respect, please note that a new paragraph 7 was added under Regulations 1 which states that *“These regulations shall be applied to all members of the Authority, the Enterprise and Contractors, as applicable, in a uniform and non-discriminatory manner”*.

As all provisions of the Regulations shall be applied in a uniform and non-discriminatory manner, we have not retained the proposal here but placed it under Regulation 1.

The amendment brings in line the title of the Regulation with its content and removes the dilution effect which the use of “use their best endeavour” and “reasonably” carry.

(b) The Authority, sponsoring States and flag States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements;

(c) The Authority shall develop, implement and promote effective and transparent communication, public information and public participation procedures;

Alt 1. The Authority and sponsoring States shall develop, implement and promote effective and transparent communication, public information and public participation procedures;

(d) The Authority shall consult and cooperate with sponsoring States, flag States, competent international organizations and other relevant bodies as appropriate, to develop measures to:

Alt. 1. The Authority shall consult and cooperate with sponsoring States, relevant adjacent coastal states, flag States, competent international organizations and other relevant bodies as appropriate, to develop measures to implement these regulations, including to:

(i) Promote the health and safety of life and property at sea and the protection of the Marine Environment; and

Alt 1 Ensure effective protection of the health and safety of life and property at sea and the protection of the Marine Environment, with respect to activities in the Area;

(ii) Exchange information and data to facilitate compliance with and enforcement of applicable international rules and standards;

(e) Contractors, sponsoring States and members of the Authority shall cooperate with the Authority in the establishment and implementation of programmes to observe, measure, evaluate and analyse the impacts of Exploitation on the Marine Environment, to share the findings and results of such programmes with the Authority for wider dissemination and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area;

Alt. 1. Contractors, sponsoring States, relevant adjacent coastal states and members of the Authority shall cooperate with the Authority and each other in the establishment and implementation of programmes to observe, measure, evaluate and analyse the impacts of Exploitation and related activities on the Marine Environment, including at the regional scale, to share the findings and results of such programmes with the Authority for wider dissemination and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area;

(f) Members of the Authority and Contractors shall use their best endeavours, in conjunction with the Authority, to cooperate with each other, as well as with other contractors and national and international scientific research and technology development agencies, with a view to:

Alt 1. Members of the Authority, sponsoring States, and Contractors shall, in conjunction with the Authority, cooperate with each other, as well as with other Contractors and national and international scientific research and technology development agencies, with a view to:

(i) Sharing, exchanging and assessing environmental data and information for the Area;

Alt. 1. Sharing, exchanging and assessing environmental data and information for the Area, including by use of data repositories and open-access databases;

(ii) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps;

(iii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information;

(iv) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area;

(v) Promoting the advancement of marine scientific research in the Area for the benefit of mankind as a whole; and

(vi) Developing incentive structures, including market-based instruments, to support and enhance the environmental performance of Contractors beyond the legal requirements, including through technology development and innovation; and

Alt 1. Developing incentive structures, including market-based instruments, to support transfer of technology and capacity enhancement of developing states and to enhance the environmental performance of Contractors beyond the legal requirements, including through technology development and innovation; and

Proposal for a new vii)

vii) Establishing a community which links the ocean data with data product users such as biogeographers, and ecologists.

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors shall use their best endeavours, upon the request of the Secretary-General, to provide or facilitate access to such information as is reasonably required by the Secretary-General to prepare studies of the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall take account of the relevant Guidelines.

Alt. 1. In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors and member States shall provide or enable access to such information, upon the request by the Secretary-General, to facilitate the work of the Economic Planning Commission to prepare studies of the potential impact of exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall be in accordance with any relevant Standards and take account of the Guidelines

Proposal for a new h)

h) The Council shall, taking into account recommendations by the Commission, adopt Standards and Guidelines concerning the duties mentioned in paras. (c) to (f) which establish requirements, obligations and procedural arrangements, including standardized data templates and methodology for data collection and analysis within three years after the adoption of these regulations or before any mineral production commences, whichever is the sooner.

Regulation 4

Protection measures in respect of coastal States

Alt 1. Rights and legitimate interests of coastal States and other stakeholders

1. Nothing in these regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention.

Alt. 1 Nothing in these regulations affects the rights and legitimate interest of coastal States in accordance with article 142 and other relevant provisions of the Convention, including its provisions on consultation, prior notification, and the taking of measures.

Proposal for a new 2.

2. The Secretary-General shall inform potentially affected coastal States, as identified in the applicable Regional Environmental Management Plan, upon the submission of an application for exploitation. Appropriate consultation and notification protocols will be developed.

New 3) 2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause Serious Harm to the Marine Environment, including, but not restricted to, pollution, under the jurisdiction or sovereignty of coastal States, and that such Serious Harm or pollution arising from Incidents in their Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.

Alt 1. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause harmful effects to the Marine Environment, including, but not restricted to, pollution, damage to the flora and fauna, ecological balance and other hazards to the Marine Environment in areas under the jurisdiction or sovereignty of coastal States, and that such harmful effects or pollution arising from activities in its Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State. Such measures shall include consulting with any coastal State concerned with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.

Comments/Remarks

Alt 1 uses the term “harmful effects” which is the one used in art 145. It also includes other hazards and the measures of consulting coastal states with the view of ensuring their rights and interests are not infringed.

Proposal of a new 4)

4) Such measures [pursuant to paragraph 1] shall include consulting with any coastal State adjacent to a proposed exploitation area prior to submitting an application for approval of a Plan of Work. Monitoring of potential transboundary impacts, accurate and precise recording of the operational area, and consultations with any coastal State concerned shall be maintained by the Contractor throughout the term of the Contract, with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.

Proposal of a new 5)

5) The Contractor shall be required to demonstrate that it has technology, procedures and knowledge necessary to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects and demonstrate its ability to respond by modifying operating procedures. The results of such a monitoring program shall be made available in real time to the coastal State and other stakeholders.

New 6)3. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause Serious Harm or a threat of Serious Harm to its coastline or to the Marine Environment under its jurisdiction or sovereignty may notify the Secretary-General in writing of the grounds upon which such belief is based. The

Secretary-General shall immediately inform the Legal and Technical Commission, the Contractor and its sponsoring State or States of such notification. The Contractor and its sponsoring State or States shall be provided with a reasonable opportunity to examine the evidence, if any, and submit their observations thereon to the Secretary-General within a reasonable time.

Alt. 1. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause harm or a threat of harm to its coastline or to the Marine Environment under its jurisdiction or sovereignty, or the exploitation by the Contractor of resources lying within national jurisdiction without the relevant State's consent, shall notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the Legal and Technical Commission, the Contractor and its sponsoring State or States or the Enterprise of such notification. The Contractor and its sponsoring State or States or the Enterprise shall be provided with a reasonable opportunity to examine the evidence, if any, and submit their observations thereon to the Secretary-General within 72 hours.

Proposal of a New (7)

7) Regulation 4(3) shall apply mutatis mutandi to any State with grounds for believing that such harm or threat of harm may be caused in any location by an activity under a Plan of Work

Proposal of a New 8)

8) In the event of Harm to the Marine Environment and the livelihood of any coastal community, adjacent coastal States which have grounds for believing such harm is caused by activities in the Area, shall notify the Secretary-General in writing through appropriate channels of the grounds upon which such belief is based and request a prompt inspection pursuant to regulation 96.

Proposal of a New 9)

9). The Secretary-General, upon the notification of a Member State, shall promptly initiate inspection in accordance with regulation 96(3), and invite representatives of coastal States to participate in the inspection, no later than 24 hours after such notification was made by the States to assess whether pollution the harm is attributable to activities in the Area.

New 10) 4. If the Commission determines, taking account of the relevant Guidelines, that there are clear grounds for believing that Serious Harm to the Marine Environment is likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165 (2) (k) of the Convention.

Alt. 1 If the Commission determines, taking account of the relevant Standards and Guidelines, that there are clear grounds for believing that Serious Harm or the threat of Serious Harm to the Marine Environment is likely to occur, it shall recommend that the Council issue an emergency order, which may include an order for the suspension or adjustment of operations, pursuant to article 165(2)(k) of the Convention and take all necessary measures to prevent Serious Harm to the Marine Environment.

Such recommendation shall be taken up by the Council on a priority basis. Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with regulation 28 (3).

New 11) 5. If the Commission determines that the Serious Harm or threat of Serious Harm to the Marine Environment, which is likely to occur or has occurred, is attributable to a breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to article 165 (2) (m) of the Convention and Part XI of these regulations.

Alt. 1 If the Commission determines that the harmful effects or Serious Harm, or threat of Harmful Effects or Serious Harm to the Marine Environment, which is likely to occur or has occurred, is attributable to a breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall notify the Sponsoring State and the Council shall issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor's activities pursuant to article 165 (2) (m) of the Convention and Part XI of these regulations.

Proposal of a New 12)

12) In the case of harmful effects to the Marine Environment within any national jurisdiction resulting from the activities of the Contractor, or in the case of exploitation of resources lying within national jurisdiction without the relevant State's consent, the Contractor shall be strictly liable for any response and clean-up costs, and for any damage that cannot be fully contained, mitigated or repaired, the Authority, shall require the Contractor to pay compensation, proportionally to the damage caused.

Part II

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

Section 1

Applications

Regulation 5

Qualified applicants

1. Subject to the provisions of the Convention, the following may apply to the Authority for approval of Plans of Work:

- (a) The Enterprise, on its own behalf or in a joint arrangement; and
- (b) States parties, State enterprises or natural or juridical persons which possess the nationality of States or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing which meets the requirements of these regulations.

2. Each application shall be submitted:

- (a) In the case of the Enterprise, by its competent authority; and

ALT 1 In the case of the Enterprise, by its Director-General and;

- (b) In the case of a State, by the Authority designated for that purpose by it;

Comments/Remarks

For consistency of paragraph 1 and 2, it is more logical to follow the same order.
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- (c) In the case of any other qualified applicant, by a designated representative, or by the authority designated for that purpose by the sponsoring State or States.

3. Each application by a State enterprise or one of the entities referred to in paragraph 1 (b) above shall also contain:

Alt 1: Each applicant referred to in Regulation 5(1)(b) above shall contain the information required by Regulation 7 and Annex I, sufficient to enable the Authority to determine whether or not the applicant is qualified to apply according to Regulation 5(1), including:

- (a) Sufficient information to determine the nationality of the applicant or the identity of the State or States by which, or by whose nationals, the applicant is effectively controlled; and

ALT. 1.: The name of the applicant, and sufficient information to determine the nationality of the applicant or the identity of the State or States by which, or by whose nationals, the applicant is effectively controlled; and

(b) The principal place of business or domicile and, if applicable, the place of registration of the applicant.

Proposal of a New c)

c) Sufficient information that the applicant has the necessary financial, technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice using appropriately qualified and adequately supervised personnel;

4. Each application submitted by a partnership or consortium of entities shall contain the information required by these regulations in respect of each member of the partnership or consortium.

5. In the case of a consortium or any group, the consortium or group shall specify in its application a lead member of the consortium or group.

Comments/Remarks about Effective Control

It was agreed in the Institutional Matters informal working group that a discussion on Effective Control is pertinent. Delegations have suggested that a definition of Effective Control is needed for the LTC and other bodies of the Authority to have certainty of how to interpret it and apply it when assessing compliance throughout the process.

Clarity of who may become a sponsoring state and whose sponsorship is required for a contractor's application to be approved by the ISA is crucial to the development of an effective liability system.

To evaluate Effective Control, the Authority must go beyond the location of the registration of the Contractor company, analysing also ownership and business management as factors relevant to determine the level of "de facto" control by the State or its nationals.

The nationality of a company is already a critical issue, but the level of control required for a Country to sponsor a private company remains a debated issue. In 2014, the LTC noted that the decision to grant sponsorship through a certificate is in itself valid to demonstrate the possession of the requirements of effective control over the private company. The Commission considered that effective control was an assessment that each Country must carry out under its own conditions and through its own national laws.

However, Article 4 (3) of the Annex III to UNCLOS provides that the Authority itself is called to develop criteria and procedures for the implementation of the provisions on sponsorship. For the consequences it can entail, we find the Regulations, and particularly Regulations 5 and 6 are relevant to develop such rules and procedures on sponsorship with a view to ensure that the requirement of effective control is duly met.

Proposal of a New 6

6) The applicant shall demonstrate the technical capability, pursuant to regulation 13 (3) (c) and the Section III of Annex I, in environmental management to be able to comply with the requirements of these Regulations.

Proposal of a New 7)

7) The Authority shall not accept the application if the sponsoring state has not enacted a mining law that complies with the standards referred to in Regulation 105.