SUBMISSIONS TO INTERNATIONAL SEABED AUTHORITY'S
REQUEST FOR COMMENTS

DRAFT REGULATIONS ON EXPLOITATION OF MINERAL RESOURCES IN THE AREA

(ISBA/24/LTC/WP.1/REV.1)

AS AT 19 NOVEMBER 2018

REGIONAL GROUPS

Stakeholder	Summary of comments	Reference / extracts
The African Group	With regard to Part XI on inspection, compliance and enforcement, it is unclear how the regulatory, monitoring and enforcement responsibilities are to be divided between the ISA, sponsoring states and flag states. In particular, how these various entities are to interact and coordinate in practice should be elucidated.	Pg 5, second bullet point onwards: "As the inspector notifies the sponsoring states in case of an emergency instruction to a contractor and the transmission of the inspection report (DR 97(3), DR 98), there is need to elaborate how it is envisaged that monitoring and enforcement responsibilities will be discharged between the ISA, sponsoring States and flag states. This could be a welcome opportunity to unpack further the primacy of the ISA's role of 'control', and the sponsoring State's role of 'assistance' (as UNCLOS appears to envisage – Articles 139 and 153(4)). There is a lack of clarity around the division of responsibilities between ISA and sponsoring State with regards to regulating Activities in the Area. The Exploitation Regulations could detail the duty to cooperate, and set out how the ISA and sponsoring States may interact in practice. Particular consideration might be given to coordination around information-sharing, and monitoring and enforcement, with a view to ensure effective, proportionate combined regulation, and avoid duplication of efforts"
	The draft regulations do not address the potential liability of the sponsoring	Pg 9 under "Liability" section: "It is concerning that the gap identified in the 2011 ITLOS advisory opinion on the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area is not being

	states with regard to activities in the Area.	addressed by the mining regulations. Therefore, the African Group suggests taking stock of the work of the Legal Liability Working Group before getting a new version for the regulations. There are numerous questions about liability that is yet to be addressed: • What type of damage can be claimed for? Does there have to be a financial loss? • Can pure ecological damage be claimed for? • Who can claim? • In what forum can they claim? Will it be ITLOS or national courts? Has this been taken into account in designing the ISA regime / by sponsoring States? Could (or should) sponsoring state domestic liability regimes and court procedures be harmonized? • What remedies can be awarded? • How does this inter-relate with the insurance requirement, and the Environmental Liability Fund?"
	There is concern that coastal states do not receive adequate protection and it is suggested that an obligation should be imposed on the ISA and the contractor to notify adjacent coastal states of exploration and exploitation activities. It is also implied in the question posed that adjacent coastal states might have recourse against the sponsoring state as well.	Pg 11, under DR 4: "The interests of coastal States are not adequately protected in these draft provisions. There should be a specific requirement at the application stage for adjacent coastal States to be automatically notified when exploration and exploitation contracts are issued in their geographic region. At present, there are no firm timelines, and it is unclear what recourse exist for coastal States if they are not satisfied with the ISA, the Sponsoring State or the contractor. Do they have standing to bring a dispute under Section 5, Part XI? In place of the existing DR 4(2), a new provision should be in place. In this new provision, it shall first be incumbent on the ISA and the contractor to notify the coastal States in question if there are grounds for believing that any activity in the Area by a Contractor is likely to cause serious harm or a threat of serious harm to the marine environment under its jurisdiction or sovereignty. Since the ISA and the contractor are privy to these details e.g. Annex II Mining Workplan, they should disclose. The existing DR 4(2)

		should be renumbered as DR 4(3) allowing coastal States to intervene on their own accord. A new provision should also be included to specifically provide coastal States with recourse to dispute resolution."
	Sponsoring states, the ISA and adjacent coastal states should be notified of occurrences of transboundary harm as well.	Pg 14, under DR 34-36: "It is important that incidents and notifiable events include occurrences of transboundary harm where the ISA, the Sponsoring State and adjacent coastal State should be notified. The adjacent coastal States must be consulted when deciding what measures and actions are necessary."

MEMBER STATES

Stakeholder	**Summary of comments**	**Reference / extracts**
Government of the Kingdom of Belgium	Annual reports and record maintenance should be submitted by the contractor to the sponsoring state as well.	Pg 5, under "Section 8 Annual reports and record maintenance": "DR 40.1: It would be useful to add that the Contractor should submit his annual reports to the Sponsoring State(s) as well."
	Sponsoring state, in addition to the Secretary-General, should be informed of the proposed modification of the Plan of Work.	Pg 6, under "Part V Review and modification of a Plan of Work" "DR 55: 2: The Contractor should notify the Sponsoring State of the proposed modification of the Plan of Work as well. 4: The Sponsoring State should be informed of the modification as well. Furthermore, the Secretary-General has too much power in this aspect. The Commission should agree with this modification as well, instead of only being informed afterwards."
Government of Australia	In general, the regulations have to be strengthened and more details need be given on the liability of a sponsoring state and how it can be responsible for	Pg 1, last paragraph: "Australia remains of the view that the regulations need to be strengthened further to ensure the ISA can review contractors' compliance with environmental obligations, penalise for breach of their environmental obligations and take swift action, pre-emptively if necessary, to protect the marine environment. We continue to consider

	ensuring safe and environmentally responsible exploitation.	that applications for Plans of Work must be accompanied by a plan to respond to environmental incidents. We again emphasise the importance of strong liability and enforcement mechanisms in the regulation for deterring environmental harm or safety violations. The penalties added under Draft Regulation 101(6) are a positive addition in this respect. We reiterate that there needs to be more detail regarding the liability of a sponsoring state and how it can take responsibility for ensuring exploitation is undertaken in a safe and environmentally responsible manner."
	The provision requiring contractors to notify sponsoring states and the Secretary-General immediately in the event of an incident should include a specific time-frame not exceeding 24 hours.	Pg 5 of document / pg 2 of table, under DR 35(2)(c): "7. Preventing and Responding to Incidents. This provision requires contractors to notify its sponsoring state/s and the Secretary-General immediately in the event of an incident. This should include a specific time-frame from the incident occurring, eg "immediately but no later than X hours from the incident occurring". This timeframe should not exceed 24-hours and ideally be within hours of the incident occurring."
	In relation to multiple sponsorships, where one sponsor has decided not to sponsor, a question arises as to whether the other sponsor has accepted full liability.	Pg 7 of document / pg 4 of table, under DR 6(1): "19. In circumstances where an applicant has multiple sponsorship (ie where the applicant has the nationality of one state and is effectively controlled by another state), and one of those states exercises its decision not to sponsor, clarity is required as to whether the issuing of the certificate by the other state implies it has accepted full liability. 20. Australia considers the regulations should seek to prevent 'sponsors of convenience' and further consideration is required as to how this can be achieved."
	The term "effective control" should be clarified as it has implications for the parent companies and states that	Pg 8 of document / pg 5 of table, under DR 6(3)(c)(ii): "22. Australia welcomes the work of the Legal Working Group on Liability highlighting the need to clarify the meaning of 'effective control' as it appears in both UNCLOS and the draft Regulations, and in particular, its implications for the role of parent companies and states that directly, or

	exercise "effective control" over the contractors.	through their nationals, have effective control over their contractors. Australia agrees that the term 'effective control' requires greater clarification."
	It is suggested that the sponsoring states retain supervisory authority over the Environmental Impact Statement (preparation) process.	Pg 10 of document / pg 7 of table, under DR 46bis: "40. Australia welcomes the increased detail in the body of the regulations on the requirements for the Environmental Impact Statement (EIS) and the Environmental Management and Monitoring Plan. However, we note that the requirement for an applicant to undertake an Environmental Impact Assessment (EIA) has now been moved from DR 13 to this regulation concerning the Environmental Impact Statement. The LTC has included in its Note, that 'the requirements for the delivery of a comprehensive environmental impact assessment need further discussion: the Commission has asked the secretariat to give this due consideration as to timing and process for development.' Consistent with previous comments, Australia considers it necessary for an applicant to undertake an EIA to ensure compliance with UNCLOS Art 206 and the 1994 Agreement, Annex Section 1(7), and fulfilment of the ISA's mandate to 'give special emphasis to ensuring that the marine environment is protected from any harmful effects which may arise from mining at activities including exploration and exploitation'. The obligation to conduct an EIA is also an obligation under customary international law, and UNCLOS, Article 206. Suggest further information regarding the scope and content of the EIA Process needs to be incorporated into the regulations to ensure compliance with our international obligations. 41. With respect to the EIS, we suggest that Sponsoring States retain supervisory authority over this process, for example, by being required to review a contractor's proposed EIS ahead of its submission to the ISA."
	Liability Trust Fund should be funded by sponsoring states and contractors.	Pg 13 of document / pg 10 of table, under DR 54: "54. Australia considers that funds for the Liability Trust Fund should come from Sponsoring States and contractors. ISA members not involved in activities in the Area should not be required to contribute. This should be reflected in the provisions."

	In the event that a sponsoring state terminates its sponsorship, one should consider under what circumstances it would be appropriate for alternative sponsorship.	Pg 20 of document / pg 17 of table, under DR 22(3): "97. Termination of sponsorship. If the State terminates its sponsorship on the basis that the Contractor is negligent or not meeting terms of the contract, or has withdrawn because of the environmental damage, the Contractor shouldn't be given the opportunity to find sponsorship elsewhere. Suggest there might need to be further consideration of when it would be appropriate to find alternative sponsorship. 98. Australia considers that a contractor should suspend its mining operations when sponsorship is terminated pending the submission of a new certificate of sponsorship."
	With regard to DR 32(3) on compliance of safety, labour and health standards, there should be clarification of which national laws the contractor should comply with, and which entity holds what responsibility.	Pg 22 of document / pg 19 of table, under DR 32(3): "107. Australia notes the ongoing work between the Authority and the International Maritime Organisation regarding jurisdictional competence and areas of cooperation, and the development of a matrix of duties and responsibilities of regulatory actors, including sponsoring states, flag states and port states. We note that this provision is one which will benefit from the clarification of these roles and with which laws the contractors are obliged to comply."
	On inspection, compliance and enforcement, it should be considered whether sponsoring states should also be given responsibility to inspect and manage for compliance.	Pg 24 of document / pg 21 of table, under DR 94: "118. As a general comment on these provisions, consideration should be given as to whether there should be responsibility on the sponsoring states to also inspect and manage for compliance, given their obligations and liabilities. 119. Australia would like to reiterate the comment from its earlier submission regarding the following issues: (1) we recommend the Authority draw on similar schemes from regional fisheries management organisations, (2) it might be helpful to set out a risk assessment process to provide guidance on how the authority would determine which activities are to be inspected; (3) suggest exploring whether sponsoring states can provide their own observers; and (4)

		explicitly addressing the role of flag state consent for the inspection of vessels. 120. The power to undertake inspections should extend to the offices of subcontractors and other providers who are mentioned in the plan of work or supporting document, such as third parties who may be contracted to provide emergency services, emergency performance guarantees etc. 121. Australia considers this provision should set out the trigger points for inspections or a regular inspection schedule."
Government of Japan	Sponsoring states should be informed when any coastal state has grounds for believing that any activity in the Area by a contractor is likely to cause serious harm or a threat of serious harm to the marine environment.	Pg 5, last paragraph: "Taking into consideration of the above-mentioned issues, Japan recommends modifying DRs 4 and 101 as follows: <DR 4> 1. Nothing in these Regulations affects the rights of coastal States in accordance with article 142 and other relevant provisions of the Convention. 2. Any coastal State which has grounds for believing that any activity in the Area by a Contractor is likely to cause Serious Harm or a threat of Serious Harm 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 of the notification to the Commission, Contractor and its sponsoring State or States.] The Contractor and its sponsoring State or States shall be provided with a reasonable opportunity to submit their observations thereon to the Secretary-General within a reasonable time."
	On the Liability Trust Fund, a confirmation is sought from the Authority that no contribution from sponsoring States and	Pg 14, last paragraph: "As DR 54 provides funding to the environmental liability trust fund, Japan requests confirmation by the Secretariat that presumed resources of the fund are fees, penalties and any other money received by the Authority as provided in DR 54, and that no contribution from sponsoring States and members of the Authority is required in this respect."

	members of the Authority is required.	
	It is suggested that sponsoring states be allowed to participate in the inspection.	Pg 20, top half of the page: "Article 165 (3) of the Convention provides that a representative of State or other Party concerned can accompany the members of the Commission upon request by any State Party or other party concerned when carrying out their function of supervision and inspection. In addition, according to article 139 (2) of the Convention, damage caused by the failure of a State Party or international organization to carry out its responsibilities under this Part shall entail liability and States Parties or international organizations acting together shall bear joint and several liability. Considering its responsibility, State Party should be permitted to participate in the inspection to make sure that the inspection is carried out appropriately. For this purpose, the modification is suggested to Paragraph 1 of DR 94 as follows: <Paragraph 1 of DR 94> • The Contractor shall permit the Authority to send its Inspectors [, who may be accompanied by a representative of its State or other party concerned in accordance with article 165 (3) of the Convention,] aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To this end, Members of the Authority, in particular the Sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority."
Government of Italy	-	-
Government of Argentina		Pg 2-3, under DR 22 and 25(3): "Draft Regulation 22. It should be made clear in this regulation that the search for an alternative Sponsoring State requires the modification of those factual conditions that

		enable a State to exercise such sponsorship [nationality of the company or those who exercise effective control, according to Draft Regulation 6 (1)]. Draft Regulation 25 (3). Even though there are no observations to be made regarding the drafting of this regulation, it should be noted that this point supports the understanding that our country has held regarding the concept of effective control, by linking the change of control with the ownership of the contractor. On the other hand, it is suggested to refer explicitly, in this regulation, to the relationship between the change of control and the potential need to seek the sponsorship of the State corresponding to that change."
Government of India	The draft regulation proposes that "Where the Commission has reasonable grounds to believe that a performance assessment cannot be taken satisfactorily by a Contractor in accordance with the Guidelines, the Commission may request that the Secretary-General procure, at the cost of the Contractor, an independent competent person to conduct the performance assessment and to compile the report." It is suggested that this step should simply be left to the sponsoring state(s).	Pg 1: "3. Draft Regulation 50 Para 6 This is arbitrary and unnecessary step. This should be left to the sponsoring state(s)."

Government of France	-	-
Government of the People's Republic of China	No new obligation should be created by the regulations. The ITLOS advisory opinion on responsibilities and obligations of sponsoring States 2011 should be fully considered for the development of the regulations.	Pg 16, at section vii "29. Draft regulation 103 This article refers to responsibilities of the sponsoring State. The Chinese Government reiterates that the Convention and the Implementing Agreement have clearly stipulated the responsibilities of sponsoring States, and no additional obligations shall be created by the Exploitation Regulation. Besides, the advisory opinion on responsibilities and obligations of sponsoring States issued by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea in 2011 should be fully considered for the development of the Exploitation Regulations. It is proposed to insert accordingly the wording of "conscious of the advisory opinion on responsibilities and obligations of sponsoring States with respect to the activities in the Area issued by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea on 1 February 2011" in this article."
Government of Singapore	In general, the draft regulations should be consistent with UNCLOS and the ITLOS advisory opinion.	Pg 1, para 1: "The Authority should ensure that the draft regulations are reasonable, clear in their scope and consistent with what is provided in the provisions of the United Nations Convention on the Law of the Sea (UNCLOS), the Agreement relating to the implementation of Part XI of UNCLOS and the Seabed Disputes Chamber's Advisory Opinion on the Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area."
	There should be further details on the duty to cooperate and exchange of information.	Pg 1, para 2: "On the exchange of information and data in Draft regulation 3, details on the cooperation processes and the work allocation between contractors, sponsoring States and the Authority can be worked out in guidelines to be developed subsequent to the finalisation of the regulation. Such guidelines can also set out details on the nature/type of information and data to be exchanged."

	Minimum 12-month notice period for termination of sponsorship may be too long.	Pg 1, para 3: "Draft regulation 22(2) provides for a minimum 12-month notice period for termination of sponsorship. The length of this notice period may be too long, especially in cases where the termination is due to a contractor's noncompliance, keeping in mind that the sponsoring State remains liable up to the point of termination. The Authority should consider shortening the minimum notice period to a reasonable length."
	It is questioned whether the sponsoring state should be required to give its prior consent to a contractor using its exploitation contract as security.	Pg 1, para 4: "Draft regulation 23(1) requires that the prior consent of the sponsoring State be sought before a contractor may use its exploitation contract as security. The Authority should consider whether such prior consent is necessary or appropriate given that the raising of finance is essentially a commercial activity/decision. The Authority should also consider and clarify what linkage, if any, there is between the requirement of a sponsoring State's consent and the requirement in paragraph 4(b) of draft regulation 23 – that the Council may require that the beneficiary of the encumbrance be properly regulated through a national financial conduct authority in accordance with the Guidelines. It is unclear whether draft regulation 23(4) refers to the consent of both the Council and the sponsoring State, or the consent of the Council only. If Draft regulation 23(4) relates also to the consent of the sponsoring State, the Authority should take into account the fact that the sponsoring State may not be in a position to ensure that the requirements are met in cases where the beneficiary is regulated by another State."
	The sponsoring state's role as regards the revision and development of an approved Training Plan is questioned and should be clarified.	Pg 2-3, para 7: "Draft regulation 39, paragraph 2 contemplates a role for the sponsoring State as regards the revision and development of an approved Training Plan. Clarity is required concerning the sponsoring State's precise role as regards the Training Plan. Further, explanation is also required as to why the sponsoring State's agreement would be required to revise or develop the approved Training Plan given that the approved Training Plan would be part of the exploitation contract between the contractor and the Authority to which the sponsoring State is not a party."

	The obligations of the various entities, including the sponsoring state, should be clarified but not necessarily within the regulations.	Pg 3: paras 8-9: "On Draft regulation 46, it is important to avoid duplication of work by the various players mentioned therein. In this regard, a matrix of responsibilities may be useful to map out the various relationships. However, the matrix should not set out how the responsibilities should be carried out. The reason is that each sponsoring state has to take into account its national system, including its legislative framework. The purpose of the matrix would be to clarify the relevant responsibilities and timeframes within which those responsibilities must be undertaken. Such a matrix of responsibilities would enable the identification of gaps or duplication and go a long way in ensuring that such gaps will be covered, and duplication of efforts avoided. However, we do not consider that the matrix necessarily needs to be incorporated into the regulations. In addition, on draft Regulation 46, paragraph (e), consideration should be given to whether State measures to enhance environmental performance of contractors may have the unintended effect of introducing unfair competition among contractors and if so whether/how sponsoring States should be limited in their ability to incentivise such performance."
	The extent of sponsoring states' participation in the review of activities under a Plan of Work and whether they have any ability to initiate participation should be considered.	Pg 4, para 12: "On Draft regulation 56, the Authority may wish to consider the extent of the sponsoring States' participation in the review of activities under a Plan of Work, as well as whether the participation of the sponsoring State(s) is wholly dependent on the invitation of the Secretary-General or the contractor, or if it can be self-initiated."
Government of the United Kingdom	The sponsoring state's consent should be required for the transfer of part or all of the contractor's rights and	Pg 5, last paragraph: "The UK supports the role of the Commission as proposed in regulations 23 and 24, however we wonder whether there should be an express role for the Sponsoring State in regulation 24. We remain of the view that the Authority should not give its consent to the transfer of part or all of the contractor's rights and obligations under the contract unless and until it

	obligations under the contract.	has established that the Sponsoring State is content with such a transfer. The situation could arise in which the contractor wishes to transfer part of its rights and obligations to an entity that is not under the jurisdiction of its contracting state. In those circumstances, the contractor and transferee will need to establish that another State is able and willing to take up the obligations of the Sponsoring State in these circumstances, and the Authority should receive that information before consent to any transfer is given. Regulation 24(4)(b) makes reference to the need for a certificate of sponsorship before the LTC will consider the transfer, but it is unclear how this will work in practice in the event that only part of the contractor's rights and obligations are transferred."
	The treatment of information should not follow the domestic law of the sponsoring states but instead international law standards. Sponsoring states should ensure they have the necessary domestic framework in place to comply with international law obligations.	Pg 9, under "Part 9": "The UK considers that it is important to be very clear on how information will be used. In our view, it should be very clear that information is public unless it is deemed confidential. In our view, including a "presumption", such as that included in regulation 87(1) will cause confusion. In line with that approach, it is our view that paragraph (2)(e) must be removed from regulation 87. If the treatment of information follows the domestic law of the Sponsoring State this is highly likely to result in different contractors having different obligations, which is unacceptable. These are international, not domestic, law obligations, and it is for the Sponsoring State to ensure that it has the necessary domestic legislative, regulatory or administrative measures in place to comply with their international law obligations. …"
Government of New Zealand	-	-
Government of the Kingdom of Tonga		Pg. 6, para 17(a): "On Draft Regulation 7, when making proposals in relation to compliance, practical considerations must also be made to jurisdictional issues particularly in situations of multiple sponsorships."
	There should be provisions for sponsoring	Pg 7, para 18(b)-(c), (e)

	states to elect to withdraw sponsorship under certain circumstances. The sponsoring state's consent should also be required for the transferring of rights and obligations under a contract from one contractor to another.	"b. On Draft Regulation 21, in respect of sponsorship for duration of the contract: we note that the Draft Regulations require a contractor to have a sponsorship certificate for the entirety of the period of the contract. With the lengthy contract period currently envisaged by the Draft Regulations, we see this as a potential problem noting the implication of undermining national sovereignty where a State may choose to terminate its sponsorship of a contract for a number of reasons including those which are not within the control of the sponsoring Government. Whilst it is understandable that there is a need for certainty in the regulations, there must be at least a process under which the Sponsoring States can withdraw sponsorship and for the Contractors to find new Sponsor(s) to fulfill their obligations and ensure their rights are not affected. c. On the Termination of sponsorship, whilst there are provisions for termination of sponsorship, which may alleviate some of the concerns regarding a State's sovereign choice whether to continue to sponsor a Contractor or not, we feel that these provisions can still be strengthened to enable balancing the rights and obligations both of the sponsoring State and the Contractor without imposing any undue influence on, or undermining the sovereignty, of a sponsoring State. … e. On the issue of transferring rights and obligations under a contract from one Contractor to another, we note that the prior informed consent of the Council, on the recommendation of the Commission, is needed. We reiterate that these rights and obligations and the proper fulfilment thereof are tied to certain rights and obligations of the sponsoring State. As such, we propose that the sponsoring State's prior consent is also required. A sovereign sponsoring State must be afforded the opportunity to decide whether it wishes to sponsor a different entity or whether it can terminate its sponsorship."
Government of Jamaica	Issues of multiple sponsorship and effective	Pg 6, bottom of page: "DR 6(2)

	control should be reviewed.	The Annex to the President's Statement invites the LTC to review the issues of multiple sponsorship and effective control. **Jamaica supports the proposed review and recommends that consideration also be given to the manner in which UNCLOS, Annex III, Article 6(4) on monopolisation should be implemented in relation to sponsorship by partnerships or consortiums.**"
	The Legal and Technical Commission should review when a situation is to be treated as a change of control or transfer of rights. Also, the definition of 'change in control' should be reconsidered.	Pg 13: "DR 25 It is possible that a *de facto* transfer of rights and obligations may occur when there is a change of control. DR 25 requires only notification of a change in control and not prior consent. **The decision on whether a situation is to be treated as a change of control or as a transfer of rights rests with the Secretary-General. Jamaica is of the view that this should be subject to review by the LTC.** Additionally, the definition of 'change in control' as provided in DR 25(3) and appears to be deficient in that a change of much less than fifty per cent (50%) of the ownership of a Contractor may in fact result in a change of effective control with implications for sponsorship. DR 6(2) provides that where an applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship. Thus where there is a change in effective control additional States may be required to assume a sponsorship role."
	There should be greater clarity in the obligations imposed on sponsoring States and flag States vis-à-vis those imposed and directly monitored by the ISA to avoid duplication of administrative procedures and compliance requirements.	Pg 19-20: "**Part IV Environment** **The Annex to the President's Statement invites the LTC to strengthen the provisions on the environment in Part IV and lists nine ((a) through (i)) specific ways in which this may be achieved. Jamaica is in general support of all nine proposals but would note that some of the revisions made to the Draft Regulations, in particular the revised text of DR 47 on pollution control, address Jamaica's concerns with the text of the previous version of 29 May 2018 which included the words "*as far as reasonably practicable.*".**

		Jamaica wishes to add the following comments on Part IV: The Draft Regulations should seek to avoid unnecessary duplication of administrative procedures and compliance requirements. Article 150 of UNCLOS establishes the policies relating to activities in the Area and includes in paragraph (b) the requirement for the orderly, safe and rational management of the resources of the Area, including the efficient conduct of activities in the Area. Towards this end, DR 3(b) provides that the ISA and sponsoring States shall cooperate toward the avoidance of unnecessary duplication of administrative procedures and compliance requirements; and DR 3(d) calls for consultations and cooperation between the ISA, sponsoring States, flag States, competent international organizations and other relevant bodies. The avoidance of unnecessary duplication requires greater clarity in the obligations imposed on sponsoring States and flag States vis-à-vis those imposed and directly monitored by the ISA through the Draft Regulations, Standards and Guidelines. DR 46 is one of the provisions of the Draft Regulations that may create multiple overlapping regulatory requirements resulting in an increased regulatory burden without enhancing the overall protection of the marine environment. DR 46 imposes a general obligation on the ISA, sponsoring States and Contractors to implement measures necessary for ensuring the effective protection of the Marine Environment from harmful effects under UNCLOS Article 145 in respect of activities in the Area. It is anticipated that the measures set out in paragraphs (a) through (e) of DR 46 will be addressed in specific obligations imposed in the Draft Regulations and applicable Standards and Guidelines. **The role of sponsoring States in ensuring compliance with the ISA obligations should be clearly defined. This should be distinct to and complementary of the role to be played by the ISA, flag States, and all member States as regards**

		persons subject to their jurisdiction and control. States may not legislate environmental standards below those required by the rules, regulations and procedures of the ISA and other global rules and standards.17 Indeed, it would seem optimal that they mirror these standards in their domestic laws. **As regards DR 46(e), the extent to which sponsoring States are required to develop incentive structures to enhance the environmental performance of Contractors requires further clarification.** DR 46(e) may be compared with DR 61 which is limited to incentives provided by the ISA. UNCLOS, Annex III, Article 13(1)(f) requires that the rules, regulations and procedures concerning the financial terms of a contract between the ISA and a Contractor and the terms of such contracts do not as a result of the financial incentives that are provided confer subsidies on Contractors so as to give them an artificial competitive advantage with respect to land-based miners. The Annex to the 1994 Agreement, Section 6, paragraphs (1)(c) & (g), (3) and (4) contemplate the possible sanctioning of a State Party that has engaged in subsidization practices and any Contractor that has accepted such subsidies. **The obligation imposed by DR 46(e) may create difficulties for sponsoring States and Contractors unless there are clear Guidelines and a possible scheme for reviewing and approving incentive structures proposed for implementation by sponsoring States. In this regard, a possible role for the Economic Planning Commission under the general mandate conferred by UNCLOS, Article 164(2)(a) may be considered.**"
	Confidentiality of information should not be determined by the laws of the sponsoring state.	Pg 26: "DR 87(2) defines the term 'Confidential Information'. The definition of 'Confidential Information' should be limited to certain types of documents across-the-board, that is to say, the application of the definition should yield the same results irrespective of the Contractor and its sponsoring State. **Jamaica therefore proposes that (i) Guidelines should be developed to inform the designation of information as confidential**

		by a Contractor in consultation with, or with the concurrence of the Secretary-General under DR 87(2) (a) and (d); and (ii) DR 87(2)(e), including within the definition of 'Confidential Information' all data and information deemed as such by the sponsoring State, should be deleted. The laws of sponsoring States will differ on the nature of data and other information that may be classified as confidential. DR 87(2)(e) may thus result in the differential treatment of Contractors without just cause."
	Where institution of proceedings against offending contractors is concerned, a sponsoring state may not have jurisdiction to institute proceedings against all relevant parties under its domestic laws, or may not be able to enforce a judgment. Therefore, the Secretary-General should also report acts of violence, intimidation, abuse against or the willful obstruction of an Inspector, or failure of non-compliance to the state of nationality of any alleged offender. It would be useful to specify which state should exercise primary jurisdiction. In	Pg 28: "DR 94 DR 94(6) provides for the Secretary-General to report, *inter alia*, acts of violence, intimidation, abuse against or the wilful obstruction of an Inspector by any person to the sponsoring State(s) and the flag State of any vessel or installation for consideration of institution of proceedings under national law. However, not every flag State is a Member of the ISA, and depending on the circumstances, a sponsoring State may not have jurisdiction to institute proceedings against all relevant parties under its domestic laws. Even where jurisdiction exists, whether civil or criminal, a sponsoring State may not be able to enforce a judgment against the offender. UNCLOS, Article 153(4) requires all States Parties to assist the ISA in exercising control over activities in the Area in order to secure compliance with the UNCLOS and ISA rules, regulations and procedures by taking measures in accordance with Article 139. Article 139 imposes the responsibility on States Parties to ensure that "*natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals*" comply with the UNCLOS, Part XI. All States Parties therefore have an obligation to ensure that their nationals, whether a Contractor or its agents and employees, comply with DR 94(4) and cooperate with inspectors and not obstruct, intimidate or interfere

	addition, provision should also be made for recognition and enforcement of a domestic judgment in any other member State.	with them in the performance of their duties; this is implicitly recognized in DR 94(1). **Jamaica recommends that additional reference should be made in DR 94(6) to the State of nationality of any alleged offender. Also, as several States may have concurrent jurisdiction over an alleged offender it would seem useful to have Guidelines on which State should exercise primary jurisdiction. The assumption of jurisdiction by one State would in many instances preclude prosecution in another State.** **Additionally, the judgment of the national court may require recognition and enforcement in other jurisdictions. Relevant reference may be made to DR 104(2)22 and its possible extension so as to provide for the recognition and enforcement of a final judgment of a court of competent jurisdiction in any member State resulting from the institution of proceedings under DR 94(6).**"
	DR 103 on the obligations of sponsoring states should mirror the text of Art 139(1) of UNCLOS, given that the ITLOS Advisory Opinion clarified that there is no residual liability on the part of the sponsoring state beyond Art 139 and in related instruments.	Pg 30: "DR 103 The Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (ITLOS) in its Advisory Opinion on "Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area" identified articles 139(1) and 153(4) of UNCLOS and Article 4(4) of Annex III of UNCLOS as the key provisions concerning the obligations of sponsoring States. The Chamber clarified these provisions and further observed that "*the liability regime established by article 139 of the Convention and in related instruments leaves no room for residual liability*" on the part of the sponsoring State. DR 103 is stated to be "*without prejudice*" to UNCLOS, articles 139(2) and 153(4), and Annex III, Article 4(4) (and DR 6 and DR 22 which essentially affirm the afore-mentioned provisions). **Jamaica recommends that DR 103 mirror the text of UNCLOS, Article 139(1), that is to say, "the**

		responsibility to ensure that activities in the Area ... [are] carried out in conformity with ... Part [XI]", as opposed to the current wording of DR 103, that is, to "*take all necessary and appropriate measures to secure effective compliance by Contractors*". The application for an Advisory Opinion was with a view to obtaining a desirable degree of clarity and certainty as regards the scope of the obligations and liability that may be imposed on sponsoring States. A reformulation of the UNCLOS text may arguably give rise to different obligations and undermine the value of the Advisory Opinion requested by Council."
Government of the Federal Republic of Germany	General comment that the role of the sponsoring states in revising and developing the Training Plan needs to be concretised.	Pg 5, 4th para: "The formulation in **Draft Regulation 39** "The Contractor, the Authority and the sponsoring State or States may, from time to time, as necessary, revise and develop the Training Plan…" is extremely vague and should be put into more concrete terms."
	In relation to DR 3 (duty to cooperate and exchange of information), it is suggested that guidelines concerning the Authority's duty to consult and cooperate with sponsoring states, etc. and other relevant bodies should be adopted within 3 years.	Pg 23 of the document, insertion at DR 3(h): "The Council should, taking into account the recommendations by the Commission, adopt guidelines concerning the duties mentioned in (c) to (f) which foresees requirements, obligations and procedural arrangements within three years after the adoption of these regulations."
	It is suggested that the certificate of sponsorship incorporate a statement by the sponsoring state that it undertakes full responsibility for the	Pg 26 of the document at DR 6(3)(d): "Each certificate of sponsorship shall be duly signed on behalf of the State by which it is submitted, and shall contain: … (d) A statement by the sponsoring State that it sponsors the applicant and therefore takes full responsibility for the compliance of any contractor or

	contractor's compliance with international law.	sub-contractor in accordance with the international law on state responsibility;"
Government of the Russian Federation	In terms of responsibility of a sponsoring State accrued during the period of sponsorship, the duration terms of a sponsorship should be further clarified.	Pg 10-11, item 20: "Draft regulation 22(4)… It is reasonable to discuss duration terms of a sponsorship after termination of a Contract or termination of a sponsorship by a sponsoring State. Continuing (open-ended) obligation is contrary to the fundamental legal concept that no one can be in a state of legal dependence for an indefinitely long period of time. Therefore, it is advisable to establish within this Regulation the duration terms of a State sponsorship. This is also relevant whereas mining activities within the Area may be carried out by other Contractors in the future; over time it might become difficult to establish cause-and-effect relationships, which may lead to unfair decisions."
Government of the Republic of Chile	In general, matters relating to sponsoring states should be further debated.	Pg 1 of Unofficial translation: "According to Chile's vision, there are specific issues that require further debate in the negotiation of the new Regulations that will regulate mining in the Zone, as for example: … - Matters related to sponsoring States."
	Terminology has to be uniform.	Pg 3 of Unofficial translation: "It is necessary to examine definitions and use of terminology, as well as the translation into Spanish of the Regulations in order to have greater certainty of its content. It is also imperative to verify the uniform use of terminology in accordance to its scope, especially if it has been defined. For example, this is underlined in the alternative use of the expressions "Sponsor State" - State that sponsors it; State of the Coastal Edge - Coastal State; effective control - control; …"

Government of the Kingdom of Morocco	There should be more information on the role of sponsoring states in cooperating, interacting, and sharing information with the Authority.	Pg 1, 5th para (middle of the page): "Regarding the role of sponsoring states and their relations with the future contractors, the Draft Regulations should provide more information on how the Authority and sponsoring States will cooperate, interact and share information. Clarity is needed on the legal aspects concerning the termination of the contracts, transfer of obligations, etc…."
Government of the Republic of Kiribati	It is suggested that a contractor has to dispose, dump or discharge any mining discharge in accordance with also national legislation.	Comments are embedded into the Draft Regulations document. Draft regulation 48 – Restriction on Mining Discharges "Consideration could be given to add a new point; c) National legislation."
Government of the Federative Republic of Brazil	Sponsoring states should be allowed to require of the Authority confidentiality of data and information for reasons of national interest or security.	Pg 17 of document / pg 5 of English translation: "2.2.9 Article 11 The whole of the proposed Article 10, which deals with the publication and examination of environmental plans, should be in agreement with our proposal for Article 87 (data confidentiality), allowing the Sponsoring State to also require of the Authority confidentiality of data and information for strategic interest and national security." Pg 22 of document / pg 10 of English translation: "2.2.34.Article 87 Similarly to what is being discussed in Brazil by the National Agency of Mining (ANM), Law LEI N0 12.527, of the 18th of November of 2011 and of DECRETO N0 7.724, of the 16th of May of 2012,among others, in essence grant the public access to information, that is, unless the information is deemed as confidential and is justifiably accepted by the agency as such. Thus, such legal opening in this Code/Regulation is understood as positive, and as mentioned in a previous comment (that on payments) would offer greater external control and transparency to the process. It is worth mentioning that, for reasons of national interest or security, in Paragraph 2, it is important to allow the Sponsoring State, as a

		participant in the process, to request temporary or definitive confidentiality of data. As such, it is recommended to add Sponsoring State to this Paragraph. a) Data and information that have been designated as Confidential Information by a Contractor or sponsoring State in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations; This is also an instance of assigning generalized duties and powers to the Secretary General (Paragraph 2 - Sub-paragraph a and d and Paragraph 3 - sub-paragraph f and i, Paragraphs 4 and 5). In this Article it may be best to give the LTC explicit responsibility over the classification to ISBA and not the Secretary General."
	After a sponsoring state has given written notice to terminate sponsorship, the operations should not be immediately suspended. A one-year grace period should be allowed for the contractor to find a secure a new sponsoring state.	Pg 19 of document / pg 7 of English translation: "2.2.16.Article 22 This Article deals with the termination of Sponsorship. In paragraph 6 it is stated that the Board may request/demand the suspension of operations. Although it is intended to safeguard against risks inherent in seafaring activities, it does not seem logically and administratively operational that immediate cessation will occur. A one-year grace period could be considered to allow the contractor to present a new Sponsorship State, given that each State has bureaucratic procedures, which are often lengthy. 6. After a sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission and taking into account the reasons for the termination of sponsorship, may require the Contractor to suspend its mining operations until such time as a new certificate of sponsorship is submitted. Suspending the operations seems illogical."
Government of the Federated State of Micronesia	General comment that the preamble should highlight the obligation of sponsoring states (amongst others) in	Pg 2-3, para 7: "It is the FSM's view that the preamble to the DRs must contain language that highlights the major objectives of the DRs and guides the content and operationalization of the DRs. To that end, while the current preamble appropriately highlights that the Area and its mineral resources are the

	protecting and preserving the marine environment in connection with activities in the Area.	common heritage of mankind, it is the FSM's view that the preamble must also highlight the obligation of the contractors, sponsoring States, other States Parties to UNCLOS, and the ISA to protect and preserve the marine environment in connection with activities in the Area. While this obligation is arguably implicit in the principle of common heritage of mankind, it is the FSM's view that the preamble must state this obligation clearly and at the outset, lest the DRs give the impression that there is an imbalance between exploitation on the one hand and the protection and preservation of the marine environment on the other hand with respect to activities in the Area."
	General comment that there is insufficient regulatory certainty for the sponsoring states (amongst others) tasked with ensuring compliance. There should be more transparency throughout the entire application and approval process.	Pg 4-5, paras 12-13: "It is the FSM's view that the framework contained in the DRs must provide sufficient regulatory certainty not just for contractors but also for the ISA, the States Parties (including those that are sponsoring States), and relevant entities tasked with ensuring compliance with the DRs (including judicial bodies). Toward that end, whenever the DRs refer to the "Authority" as taking certain decisions or receiving certain pieces of information in the application and approval process, the DRs should clarify what organ of the "Authority" will take the lead (if not have the sole responsibility) in that respect, if applicable. Additionally, it is the FSM's view that a key element to achieving a "stable, coherent, and time-bound framework to facilitate regulatory certainty" is transparency throughout the entire application and approval process. While acknowledging the need to preserve the confidentiality of relevant information—particularly that of a proprietary nature as well as legitimate trade secrets—it is the FSM's view that the work of the LTC, in particular, must be as open and inclusive as possible, including in terms of public participation in the LTC's meetings and decision-making process as well as in terms of the full disclosure of the identities of contractors that fall short of complying with existing rules and principles of international environmental law as well as the final version of the ISA's exploitation regulations. The work of the LTC is too vital to the application and

		approval process for it to be shrouded in secrecy, especially when the protection and preservation of the marine environment is at stake. It should be well within the capabilities of the LTC and the relevant secretariat to produce public transcripts (if not audio-video recordings) of the LTC's deliberations in the application and approval process, with redactions where necessary to preserve the confidentiality of proprietary information and legitimate trade secrets. This will enhance transparency, provide reassurances to those stakeholders who are concerned about the protection and preservation of the marine environment, and aid other potential contractors and their sponsoring States in ascertaining the most environmentally sound approaches to the exploitation of mineral resources in the Area."
	In terms of the sponsoring states' obligations to secure compliance by contractors, the draft regulations must at least reflect the obligations set out in the UNCLOS and those identified by the ITLOS Advisory Opinion. A more stringent standard than an obligation of due diligence may be considered.	Pg 5-6, under "Specific questions" and paras 16-17: "Role of sponsoring States: [revised] draft regulation [103] provides for a number of instances in which such States are required to secure the compliance of a contractor. What additional obligations, if any, should be placed on sponsoring States to secure compliance by contractors that they have sponsored? It is the FSM's view that, with respect to obligations on sponsoring States to secure compliance by contractors that they have sponsored, the DRs must, at a minimum, reflect the obligations set out in UNCLOS, inclusive of its Part XI Implementing Agreement; as well as those identified by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea in its advisory opinion in Case No. 17 (2011). While an obligation of due diligence appears to be the general international law principle with respect to sponsoring States and their management of the contractors they sponsor, it is the FSM's view that the ISA is not prohibited by international law from adopting a more stringent standard, building on the current due diligence obligation and requiring sponsoring States to go beyond due diligence and take a more proactive role in ensuring compliance by the contractors they sponsor.

		Additionally, it is the FSM's view that the DRs must take into consideration the domestic laws and regulations of sponsoring States with respect to securing compliance by the contractors they sponsor. If such domestic laws and regulations go beyond the current due diligence obligation in international law and require sponsoring States to take a more proactive role in ensuring compliance by the contractors they sponsor, then the DRs must allow for such an approach. By the same token, however, States wishing to sponsor activities in the Area must ensure that their domestic laws and regulations do not conflict with the finalized exploitation regulations, including with respect to securing the compliance of contractors they sponsor."
	Confidentiality of information should not be subject to merely (sponsoring states') domestic laws on confidentiality; otherwise, there is potential for abuse.	Pg 7, para 20: "Confidential information: this has been defined under [revised] draft regulation [87]. There continue to be diverging views among stakeholders as to the nature of "confidential information", with some stakeholders considering the provisions too broad, and others too narrow. It is proposed that a list that is as exhaustive as possible be drawn up identifying nonconfidential information. Do the Council and other stakeholders have any other observations or comments in connection with confidential information or confidentiality under the regulations? 20. It is the FSM's view that while a list of non-confidential information can be useful as guidance, such a list must be subject to amendment in the future, especially with respect to information that is vital to the protection and preservation of the marine environment. Contractors, sponsoring States, and other States Parties to UNCLOS—not to mention the ISA—must not use the tool of confidentiality to tip the scales in favor of commercial exploitation and to the detriment of the protection and preservation of the marine environment. The FSM is particularly concerned about the broad leeway given in DR 87(2)(e) to sponsoring States to label any data and information they wish as confidential in accordance with their domestic laws. This is ripe for abuse, in part because it introduces the possibility of "sponsor shopping" (similar to

		"forum shopping"), i.e., contractors seeking sponsorship by States with domestic laws that label as confidential the broadest range of data and information possible. This also raises the specter of uneven enforcement of the DRs with respect to confidentiality; how can the ISA—particularly the Secretary-General—maintain the confidentiality of information in as effective and coherent a manner as possible when such information is subject to a patchwork of domestic laws on confidentiality that contradict each other? And, DR 87(2)(e) can potentially lead to the invalidation of any efforts by the ISA to create a list of non-confidential information, as sponsoring States can simply enact domestic laws that label the information in such a list as confidential. It is the FSM's view that DR 87(2)(e) must either be significantly revised or deleted in its entirety. A State that wishes to sponsor a contractor for exploitation of mineral resources in the Area must have in place laws on confidentiality that comport with regulations on confidentiality promulgated by the ISA with respect to such exploitation, or else such a State cannot sponsor a contractor for such exploitation."
	Full public involvement is ideal – this would include that stakeholders including sponsoring states are consulted in the application and approval process.	Pg 9-10, para 25 ff: "Interested persons and public comment: for the purposes of any public comment process under the [revised] draft regulations, the definition of "interested persons" has been questioned as being too narrow. How should the Authority interpret the term "interested persons"? What is the role and responsibility of sponsoring States in relation to public involvement? To what degree and extent should the Authority be engaged in a public consultation process? 25. It is the FSM's view that a more appropriate term for "interested persons" is "stakeholders" (as reflected in the current DRs), as the latter is the common nomenclature in existing relevant multilateral instruments and processes. 26. In terms of substance, it is the FSM's view that full public involvement in the application and approval process with respect to activities in the

		Area is central to operationalizing the principle of common heritage of mankind and ensuring the protection and preservation of the marine environment, which (in the FSM's view) are the core guiding objectives of such an application and approval process. Such public involvement requires, among other things, that the widest possible range of stakeholders be consulted in the process, especially before critical decision-making points in the ISA. For the FSM, stakeholders must include, at a minimum (and in addition to the relevant contractors, sponsoring States, and other States Parties to UNCLOS), coastal States that are adjacent to contract areas identified in plans of work; as well as indigenous peoples and local communities with relevant traditional knowledge about marine species and/or marine ecosystems that could be impacted by activities in the Area. …"
Government of the Republic of Nauru	Sponsoring states should have the required national legislation in place to ensure effective regulation of activities in the Area.	Pg 2, under Article 140: "Article 140 Benefit of mankind … **Role of Sponsoring State and Effective Control:** Effective regulation of activities in the Area requires the International Seabed Authority (ISA) to be clear on the legal identity of the regulated entities and for Sponsoring States to have national legislation in place. There are some good sponsoring state laws in place already, such as Nauru's 2015 International Seabed Authority Act. To what extent are these precedents being taken into account in developing the ISA regime? It would be helpful for the ISA to complement, and not undermine, the existing regimes within domestic law. The Secretary-General's report on sponsoring State laws indicates that the Secretariat will prepare by the [end] of 2018 "*a comparative study of the existing national legislation with a view to deriving common elements therefrom"*: https://www.isa.org.jm/document/isba24c13. Nauru submits that this study should also explicitly consider the fit between these domestic laws and the Exploitation Regulations, and highlight any potential […]"
		Pg 4, last bullet point:

		"Stakeholder Input: Stakeholders should have the opportunity to comment on the entire Plan of Work, not just Environmental Plans but it must be acknowledged that Contractors need to have the ability to design and implement a commercially viable mine plan that meets the regulatory requirements. …"

CONTRACTORS [ISA]

Stakeholder	Summary of comments	Reference / extracts
Nauru Ocean Resources Inc. (NORI)	-	-
Ocean Mineral Singapore	-	-
Global Sea Mineral Resources NV (GSR)		Pg 5, under DR 22: "Multiple sponsoring States – Termination of sponsorship The Draft Regulations should regulate the event when one of multiple sponsoring states terminates the sponsorship."
UK Seabed Resources Ltd	The various regulatory roles and responsibilities of each stakeholder should be clarified.	Pg 2, first bullet point: "Regulatory Roles & Responsibilities. It is critically important that the regulated industry as well as other stakeholders have a clear understanding of the regulatory roles and responsibilities of each body referenced in the Code. This will be important to the contractor as well as investors – whether from a compliance, dispute settlement, liability, or accountability perspective. • An important element in determining the appropriate roles and responsibilities for the exploitation phase should be the need for the regulator to be able to respond in real time, not at 6 month or yearly intervals, to regulatory developments, questions, and issues, arising either from the contractor(s) or other stakeholders. Clarity in those roles also enables greater accountability of the regulator

		by its stakeholders. Another important factor, critical to commercial undertakings, is that the regulatory oversight and associated decision-making be immune to any potential conflict of interest, whether due to direct financial, management or other special interests. We urge the ISA to consider how best to insulate its regulatory responsibilities and oversight functions carried out through any of the bodies – LTC, Council or Secretariat – or individual contractors from actual or perceived conflicts of interest. One important step would be to incorporate published, reasoned decision-making requirements into the Code's regulatory processes."
Tonga Offshore Mining Limited (TOML)	-	-
Interoceanmetal Joint Organization (IOM)	Where there are multiple sponsoring states, issues arise as to: 1) what happens when one sponsoring state terminates its sponsorship of a contractor which is part of a consortium; 2) should written consent of all sponsoring states be required for the exploitation contract to be used as security; and 3) which sponsoring state's domestic laws should apply to ensure compliance of the	Pg 1-2, under 6.1: "Certificate of sponsorship - the role and obligations of multiple Sponsoring States of an applicant being a consortium or partnership It is a complicated issue and requires further examination. Here some issues are listed and elaborated. <u>Termination of Sponsorship</u> (DR 22.3). In the event of termination of sponsorship, the Contractor shall obtain another sponsoring State within 12 months. What if one Sponsoring State terminates its sponsorship and the Contractor being the partnership of consortium fails at finding a new Sponsoring State? How it will affect the whole consortium or partnership? Does it mean that the contract terminates? Moreover, according to DR2.5, a consortium shall specify a lead member. What if a lead member's certificate of sponsorship is terminated? How does it affect the whole consortium or partnership? There's no information on the function, role and obligations of the lead member, therefore it is not possible to predict and anticipate the results of termination of its certificate of sponsorship.

	contractors if the said laws differ, or how should the differing domestic laws interact? Should the ISA intervene in settling the legal issues?	Use of exploitation contract as security (DR23). This provision can be considered as not ensuring the equal legal framework for all the possible types and forms of contractors. In the case on an international consortium / partnership, the written consent of all sponsoring States is required what imposes the unnecessary burden on a contractor and put in favor contractors controlled by a single sponsoring State. A careful consideration shall be given to the other possibilities of executing control over the contractor by sponsoring States in this particular case. Compliance with laws of sponsoring States (DRs7.2d, 32, 35, 45, 87.2e, 94.6), issues: written undertaking of compliance, Safety, labour and health standards, Inspections, Preventing and responding to Incidents, Confidential information. Obligation of compliance with national laws of sponsoring States, however fully supported as a rule, can be a source of multiple legal problems. First of all, national legal documents of countries supervising the international entity can differ or be contradictory to each other. A careful consideration shall be given to the following questions: 1. If national law of sponsoring States differs, which legal system shall be applied? 2. How will it affect the obligations of the Contractor to the organs of ISA (e.g. with respect to disclosing the information submitted in various reports)? 3. Shall it be the internal competence of a consortium / partnership and its sponsoring States to settle the legal issues or shall the ISA be also included? Or, maybe, as a general rule, the legal framework of the lead member shall be superior in this case"
	The prior consent of the sponsoring state(s) should also be required in the event of a transfer of the contractor's rights and obligations under an	Pg 3, under 24.1: ""A Contractor may transfer its rights and obligations under an exploitation contract in whole or in part only with the prior consent of the Council" **add: and the Sponsoring State(s)**"

	exploitation contract in whole or in part.	

INTERNATIONAL ORGANIZATIONS

Stakeholder	Summary of comments	Reference / extracts
International Maritime Organization (IMO)		Pg 2, penultimate para: "Second, on '**Matters relating to sponsoring States**' the Commission noted the importance of clarifying the respective roles of the ISA and sponsoring States. Of relevance here is the jurisdictional competence of the ISA and IMO. We are engaged in fruitful discussions with the ISA Secretariat on this matter and we look forward to further collaboration."

INDUSTRY/ OTHER ASSOCIATION

Stakeholder	Summary of comments	Reference / extracts
Mining Standards International (MSI)	Consideration should be given to what laws and regulations should goven the conduct of a contractor's activities. This is because any country may pass a law which purports to govern extra-territorially / over third party countries all over the world. A conflict of laws situation may well arise. It is suggested that some hierarchy of laws be	Pg 9-10, under (14): "Draft Regulation 45 – "Compliance with Other Laws and Regulations" a. There may need to be some substantive legal consideration with respect to clause 2, which provides what otherwise seems a reasonable obligation that "Contractors shall comply with all laws and regulations, whether domestic, international, or other, that apply to its conduct of activities in the Area". The problem here is that a "Law" can be passed by any country, anywhere, which could be deemed by such country's own laws, to "apply to the conduct of activities in the Area." For example, the US regulates activities in third party countries all over the world, as do other countries. It is therefore very reasonable to imagine that this clause could create a conflict of laws situation in which different countries adopt provisions that assert potentially conflicting application to the Area. MSI suggests that some limitation be considered, such as that compliance shall apply

	adopted, with the laws of the sponsoring state and the draft regulations applying first.	first with the laws of its sponsoring State and these Regulations, and then, to the be to the best of ability and knowledge of the Contractor (as otherwise they would need to constantly monitor all the laws of the world to ensure none are applicable to the Area at any given time), any other laws or regulations whether domestic or international that apply to the Area, to the extent such laws do not create a conflict of laws with respect to its existing obligations.
	There is insufficient clarity in DR 46(e) requiring that sponsoring states (amongst others) develop incentive structures.	Pg 10, under (15): "Draft Regulation 46(e) "General Obligations" a. This provision requires that the Authority, Sponsoring States and Contractors "develop incentive structures, including market-based instruments that support and enhance the environmental performance of Contractors, including technology development and innovation". It is not clear what is the intent here, or how it would be achieved, let alone what role a Contractor would have in creating an instrument to enhance its own performance. Clarity should be provided here. In what way could a party be in breach of this obligation?"
	The development of Standards should also take into account the views of sponsoring states (amongst others).	Pg 13, under (32): "Draft Regulation 92 "Adoption of Standards" a. MSI believes that the development of Standards should also take into account the views of interested stakeholders, sponsoring States, and Contractors in addition to "recognized experts". Further, the submission of standards should include an assessment of the cost of adoption of any new standard to the industry and each Contractor and a cost/benefit analysis for all stakeholders. Further, as a general principle such Standards should not be adopted if to do so would comprise an unreasonable financial impost on an operation that had already been approved and sanctioned by the Commission."
	Sponsoring states should be involved in reviewing and responding to complaints made by a person aggrieved by an	Pg 14, under (36): "Draft Regulation 99 "Complaints" a. If there is a complaint, any report of the Inspector should be withheld from public disclosure until the complaint has been

	action of an Inspector to the Secretary-General.	adjudicated in order to avoid any damage accruing to the Contractor from any wrongful or incorrect action by an Inspector. b. There should be an appeal process specified for any corrective actions. c. The Secretary General should in principle not undertake material actions that could financially or operationally harm a project without consultation and approval by the Commission or Council. d. It would seem the Sponsoring State should be involved in reviewing and responding to any Complaints."
	The Sponsoring State should be involved in any compliance notice issued by the Secretary-General and the corrective action required of the contractor.	Pg 14, under (38): "Draft Regulation 101 "<u>Compliance Notice and Termination of Exploitation [Contract]</u>" a. In Clause (1), the Secretary-General should only take action on "material" breaches (the draft Exploitation Contract refers to serious persistent and wilful violations of fundamental terms). b. It would seem that the Sponsoring State should be involved in any notice and corrective action required. c. Unless required for immediate safety or health precautionary reasons, the right to suspend or terminate should be based on a recommendation of the Commission and approved by the Council, after a reasonable defined period (not provided at the moment) to take corrective action has elapsed (such as perhaps 90 days). d. An appeal mechanism should be considered."
	Since a sponsoring state bears potential liability for any act or omission of the Authority, there is great need for clarity on how the two entities should cooperate. One should consider how the sponsoring state should be informed of relevant	Pg 14-15, under (39): "Draft Regulation 103 "<u>Sponsoring States</u>" a. Note that under UNCLOS 139(1) States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties, or sponsored nationals, comply with UNCLOS. It would seem that the Authority must ensure that any actions it takes are undertaken in cooperation with the State Sponsors to enable such State to meet its obligations under UNCLOS. UNCLOS 139(2) provides that where a State Party acts together with an international organization, they shall bear joint and several

	information and consulted before any action is taken by the Authority which has an impact on the contractor.	liabilities for any damage. This means that a State Sponsor has liability for any actions taken or failed to be taken by the Authority, furthering the need for clarity on how the two entities will cooperate. b. There should be specific requirements here for the Inspector, Commission and Secretary General to consult with and inform the Sponsoring State of any relevant information in order for it to undertake its compliance enforcement role. c. Consideration might be given to whether a broader right should be adopted such that the Sponsoring State is entitled to be copied on all material compliance correspondence between the Contractor and the Authority. d. Consideration should be given to whether the Sponsoring State should be consulted before any action is taken by the Authority that impacts on the Contractor under the Regulations. e. As an interesting technical legal matter, UNCLOS Article 178 provides the Authority immunity from legal process, so the joint and several liabilities could result in the Sponsoring State having the sole financial liability of actions wrongfully taken by the Authority. (This is seemingly avoided by actions taken in connection with the draft Contract which does grant liability of the Authority)."
International Marine Minerals Society (IMMS)	In the event of termination of sponsorship, a statement by the sponsoring state specifying the reason therefor should be required. (This seems to be just a drafting suggestion to DR 6 so as to mirror DR 22.)	Pg 5, under Draft Regulation 6: "Draft Regulation 6. Members suggest the addition of a new item 5 that would require a statement by the sponsoring state that specifies the reasons for which the sponsorship would be terminated (Draft Regulation 22).

International Cable Protection Committee (ICPC)	-	-

E-NGOS

Stakeholder	Summary of comments	Reference / extracts
Deep Sea Conservation Coalition (DSCC)	"Effective control" should be defined, and clarity given to procedures that must be followed for any changes, or potential changes, to effective control. Also, questions arise where there are multiple sponsoring states and one sponsoring state terminates, or where effective control of the contractor changes from one state to another – what are the implications for the entire sponsoring agreement?	Pg 9: "DR 5 Qualified Applicant and DR 6 Certificate of Sponsorship: Effective Control DR 5.1(b) reads: 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. DR 5(3) (a) requires 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; DR 6 (2) reads: Where an applicant has the nationality of one State but is effectively controlled by another State or its nationals, each State shall issue a certificate of sponsorship. The term "effective control" and its equivalent also appears in DR 42 and DR 45 and elsewhere. There should be a definition of "effective control". This is a difficult and complex question and must be addressed. Other questions arise. If a contractor has multiple sponsoring States and one terminates its sponsorship, does this terminate the entire sponsorship agreement? Other examples are where only one sponsoring

		State is listed, but effective control of the contractor changes such that another State should be added as a sponsoring State."
		Pg 14: "DR 25 Change of Control The draft exploitation regulations place significant responsibilities on sponsoring States and contracting entities. It is therefore essential for the ISA to have clear definitions of "control" and rules and procedures around any "change of control" that may occur during the course of a contract. Currently, DR 25 defines change in control as a change in ownership of 50 percent or more. This definition should be reconsidered. A much smaller percent change in ownership (e.g. 2% in a case of 51%/49% control) can lead to dramatic changes in control. In addition to clarifying the definition of "change of control," the regulations should also consider how a change of control might affect sponsorship status. The Commission in the Annex of its Note said that draft regulation 25 is not related to a change of control per se, but the consequences of such change on the financial capability of a contractor. But a change in control may lead to a material change in the nature of the contractor, leading to the assessment made in DR 13 nugatory. Moreover, if a change of control leads to a change in the nationality of the contractor, this may mean that the sponsoring State is no longer the State of nationality or "effective control". Who has responsibility of notifying the sponsoring State of this change and for determining which State should be the sponsoring State following such a change? What happens if the new State of nationality doesn't want to sponsor the contract? The exploitation regulations need to provide additional clarity around the definition of effective control and the procedures that must be followed for any changes, or potential changes, to effective control."
	There should be automatic termination of mining when the notice of	Pg 13: "DR 22 Transfer of Sponsorship The proposed default 12 month period is too long: the notice of termination should also include the date for termination. Due to the

	termination of sponsorship is issued. Also, where there is a change of sponsoring state: 1) there should be a requirement for a prior review of the contractor's track record; 2) questions arise as to how the Council might exercise its discretion to suspend the mining operations; and 3) questions arise as to what qualifies as a change of sponsorship.	requirements for due diligence of the sponsoring State, termination should result in termination of mining until a new sponsoring State is obtained: DR 22.6 should therefore provide for automatic termination of mining. There is no provision in the new draft regulations requiring a review of the contractor's track record prior to a change of sponsoring State. Such a provision should be included. Under DR 22(6), once a sponsoring State submits a written notice of termination of sponsorship, the Council, taking account of the reasons for termination of sponsorship, may require the Contractor to suspend its mining operations until such time as a new certificate of sponsorship is submitted. However, the criteria for such a decision are unclear. Equally, change of control may mean an effective change in the responsibility of the sponsoring State, but this issue has not yet been comprehensively addressed. If 100% of the shares of a company change ownership so that all shareholders are of a different nationality, and all directors are of a different nationality, what are the implications for the sponsoring States and its obligations under the Convention and regulations?"
	The role of the sponsoring state in Environmental Impact Assessments and Environmental Impact Statement, monitoring, enforcement, consultation, and reporting need to be clarified.	Pg 16, third para from top: "DR 46 does not assign responsibilities to specific entities. Rather it leaves the Authority, sponsoring States, and Contractors to "each, as appropriate, plan, implement, and modify measures necessary for ensuring the effective protection of the marine environment from Harmful Effects." The roles of the Authority and sponsoring State still need to be clarified. These include roles in EIAs and EIS, monitoring, enforcement, consultation, and reporting."

INTERGOVERNMENTAL ORGANIZATIONS

Stakeholder	Summary of comments	Reference / extracts
Sargasso Sea Commission	-	-

ACADEMIC | SCIENTIFIC

Stakeholder	Summary of comments	Reference / extracts
Center for Polar and Deep Ocean Development	The draft regulations on the responsibilities and obligations of sponsoring states may draw guidance from the ITLOS Advisory Opinion.	Pg 11-12 of document / pg 6-7 of English translation: "Draft Regulation 103 Sponsoring States This article provides that "States sponsoring Contractors shall take all necessary and appropriate measures to secure effective compliance by Contractors whom they have sponsored with Part XI of the Convention, the Agreement, the rules, regulations and procedures of the Authority and the terms and conditions of the exploitation contract". The Advisory Opinion on Responsibilities and Obligations of Sponsoring States with Respect to the Activities in the Area issued by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea shows significant importance for clarifying sponsoring states liabilities, regulating international seabed activities, and maintaining the legal system of the seabed, thus the formulation of the Draft Regulations may add contents from it."
Deep-Ocean Stewardship Initiative (DOSI)	Sponsoring state(s) should be invited to participate in the review of activities under a Plan of Work.	Pg 11, first para from top: "DR 56(2): "A review of activities shall be undertaken in accordance with the Guidelines. The Secretary-General or the Contractor may invite the sponsoring State or States to participate in the review of activities." • Amend to "….The Secretary-General or the Contractor will invite the sponsoring State or States to participate in the review of activities.""
	Where the contractor has been found of failure to comply with the regulations, there is no provision for any sanction beyond mere reporting to the sponsoring state(s) and flag state.	Pg 12, under Part X: "DR 94(6): Recommend including "harassment". Additionally, while DR 94(1-5) are very thorough, DR 94(6) does not detail what the consequences are for not conforming to the regulations, save being reported to the sponsoring/flag State. Recommend the consequence be made clear e.g. termination of the contract."

EU ATLAS Horizon 2020 Project	Regarding confidentiality of information, it is suggested that consideration should also be given to the laws of sponsoring states, and the potential differences between states on what is considered confidential.	Pg 10-11, under DR 87: "*87: 2b.* Does the Authority have an institutional data policy? If so, the handling of personal information with respect to the Regulations for Exploitation should be consistent with this policy. We suggest that consideration should also be given to the laws of Sponsoring States that may differ on how personal information should be handled, for example the EU General Data Protection Regulation (GDPR) 2016/679. This issue links to 87: 2e. … *87: 2e.* We wonder what would happen if information categorised under 87: 2e also falls under paragraph 87 3d – _f. In such cases, would there be the opportunity for discussion between the Authority and Sponsoring State regarding its confidentiality? We suggest that consideration could also be given to potential differences between States on what information is considered confidential, and how best to accommodate this whilst maintaining a level playing field for all States."

PRIVATE PERSONS

Stakeholder	**Summary of comments**	**Reference / extracts**
Fish Reef Project	-	-
Philomène Verlaan	Once a sponsorship is terminated, the contractor should not remain responsible and liable to the Authority for the performance of its obligations under the contract.	Pg 5, under DR 22: "**DR 22(7):** "Nothing in this regulation shall relieve a Contractor of any obligation or liability under its exploitation contract, and **the Contractor shall remain responsible and liable to the Authority for the performance of its obligations under its exploitation contract in the event of any termination of sponsorship." [*Emphasis supplied.*]** *This is inconsistent with **DR 22(3) and (6)**. Responsibility and liability cannot remain open-ended once State sponsorship ceases irrevocably. State sponsorship is a non-negotiable condition precedent for a contractor to be even considered for, let alone granted, a contract to operate in the Area. It is*

		*therefore unclear how a contractor can remain "responsible/liable, etc." under that contract without continued State sponsorship. It is recommended to reconsider and rewrite **DR 22(7)** accordingly."*
	Sponsoring states (and the Legal and Technical Commission) should be allowed to make a request to initiate discussions regarding any matter connected with the Plan of Work, exploitation contract or activities under the exploitation contract.	Pg 9, under DR 56(5): "**DR 56(5**): "Nothing in this regulation shall preclude the **Secretary-General** or the Contractor from making a request to initiate discussions regarding any matter connected with the Plan of Work, exploitation contract or the activities under the exploitation contract in cases other than those listed in paragraph 1 above." **[*Emphasis supplied.*]** *See comments made under **DR 13(1)(f), DR 26, DR 55 and DR 74** re issues relating to ultra vires/substantive legal competence with regard to the role and functions assigned to the Secretary-General under these draft Regulations in this context. See also comments made above under **DR 56(1)** re the transparency and uniform/non-discriminatory issues raised by the process set out herein.* *It is recommended that the LTC and the Sponsoring State be included in the list of those permitted to make such a request. "Discussions" as a process will require careful definition."*
Neptune and Company Inc.	-	-
Pradeep Singh and Angelique Pouponneau	Sponsoring states (amongst others) are under an obligation to prevent transboundary environmental harm. It is implicit that the ITLOS Advisory Opinion should apply.	Pg 1: "While there are other crucial areas within the Draft Exploitation Regulations that would require further scrutiny, our comments here relate specifically to a specific issue. As is common knowledge, the conduct of activities in the Area may affect the rights and interests of coastal States adjacent to the Area. This is twofold: first mineral resources that are spread across both areas may be a subject of interest (particularly if the coastal State is yet to demarcate its continental shelf with finality); and second, transboundary environmental harm. Our comments focuses on the latter. In our view, the Draft Exploitation Regulations do not sufficiently address this concern of transboundary environmental harm and its effects on adjacent coastal states.

		In this regard, it is pertinent to recall the Advisory Opinion on the Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area of 2011. Here, the Seabed Disputes Chamber relied on the contemporary norms of international law pertaining to transboundary environmental harm in the context of activities in the Area. Although the Seabed Disputes Chamber did not specifically address the issue of potential transboundary harm that may arise and affect the rights of adjacent coastal states, it is implicit (through referencing of Article 206 of UNCLOS and the Pulp Mills on the River Uruguay at paragraphs 146-148) that the same rules should apply. Accordingly, the ISA, the Enterprise (when it comes into existence), member States, sponsoring States, and other entities engaging in activities in the Area are under the obligation to control, reduce and prevent transboundary harm arising therefrom. Hence, we stress that the Draft Exploitation Regulations should address this further, beyond a cursory reference in Draft Regulation 4."
Andreas Kaede	-	-