UK Seabed Resources appreciates the opportunity to provide its responses to the ISA questions – both general and specific – on its draft regulations for exploitation of mineral resources. Overall, UKSR commends the ISA and its Legal & Technical Commission for the significant effort and preparatory work undertaken to advance the regulatory framework to this point. We commend the ISA for its open and transparent consultative process in which all stakeholders are invited to participate. The ISA's commitment and approach to a multi-stakeholder regulatory process is consistent with regulatory models around the world, in which regulators recognize the value of soliciting expertise from across the stakeholder communities in the formulation of regulatory frameworks and associated policy decisions. We look forward to working with the ISA through its multi-stakeholder process to complete the regulatory framework by end of 2019, as reflected in the final deliberations of the 2017 ISA Annual Session.

ISA Questions relating to the draft regulations on exploitation of mineral resources in the Area

General questions

1. Do the draft regulations follow a logical structure and flow?

   A: Yes, UKSR commends the ISA for setting forth an integrated single draft framework, and believes that the ISA has successfully implemented a logical structure and flow.

2. Are the intended purpose and requirements of the regulatory provisions presented in a clear, concise and unambiguous manner?

   A: UK Seabed Resources observes that the overall intended purpose is clear, and appreciates the ISA's effort to a common understanding of the regulatory provisions. There remains the need to provide greater detail on the exact nature of certain categories of regulatory requirements, notably both financial and environmental.

3. Is the content and terminology used and adopted in the draft regulations consistent and compatible with the provisions of the United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the implementation of Part XI of the Convention?

   A: UKSR believes that the draft regulations are a very deliberate effort to advance the vision and goals of the Convention to enable commercial exploitation activity, by addressing all elements – general regulatory, financial and environmental requirements. UKSR commends the ISA for its focus on the Convention's vision and goals.

4. Do the draft regulations provide for a stable, coherent and time-bound framework to facilitate regulator certainty for contractors to make the necessary commercial decisions in relation to exploitation activities?

   A: UKSR notes that considerable substantive progress is being made in the development of the regulatory framework, and is very supportive of the ISA effort to ensure that there will be regulatory certainty by which contractors can make commercial decisions regarding investment toward exploitation activity. In particular, ISA consultations and facilitated workshops have enhanced the understanding of the regulatory options pertaining to both financial and environmental requirements. That progress remains to be reflected in the further iterations of the draft regulations.

5. Is an appropriate balance achieved between the content of the regulations and that of the contract?

   A: UKSR believes that in general an adequate balance is achieved. In particular we recognize the need for the framework to be sufficiently high level in technical content to allow for both

adaptability and evolution as more and more experience is gained with exploitation activity, while also ensuring adequate predictability and certainty in key regulatory categories. It is important that the balance avoid any appearance of affording different regulatory treatment among contractors.

6. *Exploration regulations and regime:* are there any specific observations or comments that the Council or other stakeholders wish to make in connection with their experiences, or best practices under the exploration regulations and process that would be helpful for the Authority to consider in advancing the exploitation framework?

   A: UKSR emphasizes that the transition to exploitation will require a sustainable regulatory construct, which emphasizes transparency, non-discrimination, technology neutrality, and overall regulatory procedures which ensure accountability by both contractors and the ISA as the regulator. Moreover, UKSR views these elements as pre-requisites to the significant capital investment required for the transition to exploitation.

Specific questions

1. *Role of sponsoring States*: draft regulation 91 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?

   A: UKSR believes that it is more appropriate for Sponsoring States and State Parties to respond to this governance question. However, we would recommend that any ISA-required obligations from Sponsoring States should not create directly or indirectly advantages among contractors, whether state-owned or commercial entities.

2. *Contract area:* for areas within a contract area not identified as mining areas, what due diligence obligations should be placed on a contractor as regards continued exploration activities? Such obligations could include a programme of activities covering environmental, technical, economic studies or reporting obligations (that is, activities and undertakings similar to those under an exploration contract). Are the concepts and definitions of "contract area" and "mining area(s)" clearly presented in the draft regulations?

   A: UKSR seeks to ensure that the draft regulations enable a smooth transition of rights from exploration contract area to exploitation contract area. A qualified contractor transitioning from exploration to exploitation should be eligible to apply for an exploitation contract area that is the size of the exploration contract area – the period of the contract would be the full tenure of 30 years. Our understanding and expectation is that the mining area(s) would be identified as part of the contractor's initial plan of work, and modified, in conformance with ISA-established procedures, to expand to include additional sites as commercially determined viable. We would anticipate that within exploitation contracts is the ability and desire for contractors to continue with exploration of the contract area, and results from any such activities should be reported as currently required by exploration contracts.

3. *Plan of work:* there appears to be confusion over the nature of a "plan of work" and its relevant content. To some degree, this is the result of the use of terminology from the 1970s and 1980s in the Convention. Some guidance is needed as to what information should be contained in the plan of work, what should be considered supplementary plans and what should be annexed to an exploitation contract, as opposed to what documentation should be treated as informational only for the purposes of an application for a plan of work.

   A: UKSR believes that a similar approach to the exploration contract application is a good starting point for requirement in an exploitation contract application. UKSR is unfamiliar with the concept of supplementary plans, but would encourage the ISA to use terms consistently. If this is intended to be a modification of a plan of work, then again the existing modification procedures could be carried over to the exploitation regulations.

4. Similarly, the application for the approval of a plan of work anticipates the delivery of a pre-feasibility study: have contractors planned for this? Is there a clear understanding of the transition from pre-feasibility to feasibility?

   A: While contractors are aware of the expectation of a pre-feasibility study, it is not at all clear how the ISA anticipates transitioning from pre-feasibility to the feasibility stage. UKSR would welcome greater clarity on the expectations, in the regulations and potentially LTC guidance.

5. *Confidential information:* this has been defined under draft regulation 75. 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 non-confidential information. Do the Council and other stakeholders have any other observations or comments in connection with confidential information or confidentiality under the regulations?

   A: UKSR would prefer that the ISA identify the limited categories of information that would be presumptively eligible for confidentiality, thus designated as such. Recognizing that there may be exceptions needed, contractors could petition for a non-designated category to be eligible for confidential treatment, but that decision must then be made generally available to all contractors in order to ensure no preferential treatment among contractors and transparency of the regulatory framework. UKSR seeks to emphasize the need for the ISA information management system and internal ISA information access protocols to have the degree of operational and technical security to adequately protect any confidential information submitted. Failure in the IT systems and operations to be able to maintain securely confidential information could have significant economic impact on contractors and the market.

6. *Administrative review mechanism:* as highlighted in Authority discussion paper No. 1, there may be circumstances in which, in the interests of cost and speed, an administrative review mechanism could be preferable before proceeding to dispute settlement under Part XI, section 5, of the Convention. This could be of particular relevance for technical disputes and determination by an expert or panel of experts. What categories of disputes (in terms of subject matter) should be subject to such a mechanism? How should experts be appointed? Should any expert determination be final and binding? Should any expert determination be subject to review by, for example, the Seabed Disputes Chamber?

   A: Generally, UKSR believes that an administrative review mechanism may be appropriate first step to address particular categories of "disputes" – with or without impact to a party's substantive rights. They may be technical, procedural or more substantive. If both parties choose to avail themselves of an administrative review process rather than proceeding directly to dispute settlement, the ISA should permit that. Alternative dispute mechanisms work best when they are able to be faster, better, cheaper, and more confidential than traditional dispute mechanisms. On the other hand, absent an agreement between the parties that the results are binding, either party should have recourse to appeal or proceed to formal dispute settlement – in short, a stepped-process that enables resolution of disputes without turning first to the Seabed Disputes Chamber - particularly for technical (e.g., clarification of exploitation boundary lines), administrative (i.e., proper discharge of obligations), or financial (e.g., calculation of royalties) issues.

   It would be highly preferable to use the existing UNCITRAL arbitration rules, rather than creating something new from whole cloth, to increase the speed and predictability of dispute resolution. The rules provide that both parties to the dispute (for two-party issues) can appoint an arbitrator and that those arbitrators choose a third to drive toward neutrality. It would be quite complicated to create a bespoke suite of rules for the ISA itself, and doing so would unhelpfully limit the number of practitioners who were sufficiently aware of and skilled with application of the rules. The goal is to ensure a known and trusted process is applied, in order to maximize the use of the speedier and less costly approach.

   UKSR submits that an arbitral (or expert panel) decision should not be final and binding as a general matter, and the Seabed Disputes Chamber should not have prior review; however, such a decision should be appealable to the Seabed Disputes Chamber. There may be exceptions where

both parties prefer to have a decision be binding, and, if mutually agreeable, may then elect to waive the right to appeal. Also, where the timeliness of the decision has ramifications for both parties, UKSR suggests that those decisions may perhaps be designated as not subject to review by the Seabed Disputes Chamber. For such a new emerging industry and activity, it is likely preferable and far simpler to choose an arbitral approach – they are the fact finders, and experts in the field can and should be called up on to provide expert opinions.

7. *Use of exploitation contract as security:* draft regulation 15 provides that an interest under an exploitation contract may be pledged or mortgaged for the purpose of obtaining financing for exploitation activities with the prior written consent of the Secretary-General. While this regulation has generally been welcomed by investors, what additional safeguards or issues, if any, should the Commission consider?

   A: UKSR commends the ISA for recognizing the commercial importance that being able to use the exploitation contract as security. We recognize however that there are sponsorship and other governance questions that State Parties, Sponsoring States and the ISA may need to address in terms of the scope of this. For example, does the contractor's sponsoring state need to concur given sponsoring state obligations to the ISA? If the financial institution is located in another state, does there need to be a second sponsoring state associated with the contract at whatever point in time the contract is "mortgaged"?

8. *Interested persons and public comment:* for the purposes of any public comment process under the 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?

   A: UKSR believes that the term "Interested persons" is adequately broad to comprehend all stakeholder groups, and transparency and openness of the ISA regulatory processes is important to ensure a sound, credible regulatory framework results, pursuant to which exploitation applications may be reviewed and exploitation contracts issued. Regulators around the globe manage the disposition of comments filed in public consultations. One increasing challenge in the digital age is the ability to generate almost in an automated fashion an overwhelming number of nearly identical comments in support of or against something. The ISA should be able to rely upon State Parties own distinct national approaches to inform their views into the process.