



DSCC intervention on Agenda item 12. Draft regulations 49-56

21 February 2020

Part IV - Sections 3-5; Draft Regulations 49-56

Thank-you Madam President

We support FSM's and Netherlands observations on BBNJ. BBNJ will have competence on matters of marine biodiversity in areas beyond national jurisdiction, and the ISA Regulations need to be consistent with the provisions on area based management tools, environmental impact assessments and other relevant provisions. There will be important synergies between the two regimes and as Jamaica said, there should be coherence between the two regimes. To use one small example, activities from ISA should not pollute MPAs, let alone be undertaken within MPAs.

Draft Regulation 50

On Regulation 50, we support many of the proposed amendments, but have some concerns with the proposed not undermining language in the new paragraph 4. Rather, we suggest that mutually supporting provisions should be aimed at improved coordination and cooperation between the two organizations.

It should be noted that mining discharges are permitted where allowed under the Environmental Management and Monitoring Plan (EMMP). This underlines the importance of development of an appropriate EMMP we discussed yesterday. Support AUS in this respect

We support Costa Rica and the African Group's comments regarding the exception in paragraph 2. We would propose that Serious Harm to the Marine Environment should be changed to environmental harm consistent with provisions of Article 145, and the loss of biodiversity. Serious harm is a very high threshold.

Draft Regulation 52

Under Regulation 52, performance assessments, firstly, the ISA, or independent third party, should carry out the compliance assessment, not the contractor.

Secondly currently the only transparency requirement is that the report is to be made public under paragraph 4. The regulation should also require public comment. Also the 2 year frequency has been deleted. It should at least allow for yearly reviews: not be subject to the Environmental Management and Monitoring Plan (which may provide for inadequate periods, at least in hindsight).

We would also like to express our support for the proposals from Spain and Germany for Sections 3 and 4.

Draft Regulation 53

The obligation to consult with coastal States is an important addition, to which we would add that this would also include not just coastal States but indigenous people, but we believe that the consultation should also be with ALL affected stakeholders, accompanied by transparency, in light of the status of the Area as common heritage of mankind.

Draft Regulation 54

We support the many delegations which have concerns at the purposes of the funds. Functions such as training and research will deplete the fund, and all of which should be carried out by contractors. We support China, Italy, Australia and the other delegations on this.

We should bear in mind the reason given the Seabed Disputes Chamber in the Advisory Opinion, being needed to cover a gap left when for instance a contractor is insolvent.

We support suggestions that there should be two funds: an Liability Fund and an Environmental Fund as Costa Rica and FSM and others suggested. This issue came up in the meeting of the open ended working group last week as well.

Draft Regulation 55

It is clear from the discussion today that the purposes of the Fund need major revision. The only suitable provision is in paragraph (a) which addresses damage.

In the compilation document, proposed 55 alt1 comes closest to the Fund, which was recommended by the Seabed Disputes Chamber.

Draft Regulation 56

The funding of the fund, which has been discussed briefly in the Financial Working Group. The current proposal is to fund the fund by ongoing contributions, which raises the problem that mining could be carried out while the Fund is seriously underfunded. We support Nigeria's comments in this regard.

On regulation 56, the quantum of the Fund has yet to be quantified. Quantification will need assessment of the environmental values of the deep sea and affected water column, including but not limited to ecosystem services, as well as the quantification of potential environmental damage and the cost of remediation. None of this work has been done to date. To be clear, this is not just from accidents but from unanticipated effects or effects greater or different to those envisaged. We support Nigeria's comments on this.

Finally, we agree with the comments of our colleagues from the Pew Charitable Trusts.