Part 10
On the chapeau, as we have said earlier, the avoid, remedy or mitigate language is not suitable for deep-sea mining and is not compatible with Article 145, where the requirement is effective protection for the marine environment from harmful effects. Simply put, harmful effects need to be prevented, rather than just avoided, remedied or mitigated. The possibility or indeed, over the 30 year life (or more likely 40 or 50 or more, taking into account 10 year renewals), these kinds of extreme weather effects are highly likely to occur, particularly taking into account hurricanes which we know are made more intense by climate change.

For future reference: to support the argument that accidents are likely to happen, refer to the accidents that have already happened during test mining (e.g. accident with collector machine)

Part 12
Just a brief point going back to paragraph 12 and on product stewardship and the intended use of the mineral-bearing ore once it leaves the area.

This is not only an environmental impact point but a broader socio-economic point. Much more information about the use of metals is needed.

Already we know that the Metals Company has been talking about strategic use of metals for example.

There are no clear provisions as to the uses of these metals versus wider social interests.

It is not just environmental impacts but also socio-economic and cultural impacts that must be taken into account.

In section 12 there is a distinct lack of substantive guidance in this section on supply chain transparency and chain of custody. This is a key institutional responsibility of the ISA that is currently not accounted for.

15 Currently reads “If” independent scientists or other experts were involved in any of the work. This seems to imply that is optional; we believe that independent science is crucial. We also support Costa Rica on the important matter of conflict of interest.

Part 13-14 (Consultation)
An overall observation wish is that the relevant term should be stakeholder participation not just consultation. This is a broader obligation than consultation and guidelines for ensuring effective stakeholder participation. Currently there is a complete lack of such guidelines.

Also specific details of information provided to stakeholders and timeframes.

13.1 should read consultation with Stakeholders not groups
13.2 delete relevant before stakeholders
13.3 needs some editing

**Annex VII**

Overall, this Annex is extremely brief, but is interrelated with the regulations and standards and guidelines and so the Council will need to come back to it.

We have said before that these documents need to be prepared by the Authority as the regulator and not the contractor,

We support the US suggestion on paragraph (c) on baseline data, with one minor addition

Not en

In para (e), it is not only likely effects but possible effects which need to be assessed.

In para 2(f), the word minimise is misplaced. The marine environment is to be protected from environmental harm, which is far stronger than minimise. If the marine environment is not protected, then mining should not go ahead. Currently this implies that effects are only to be minimised, no matter how harmful.

In para (g) we have already spoken last week about adaptive management. We noted there that adaptive management is to be used only where it is consistent with the precautionary principle. Currently there is insufficient scientific information for this to be appropriate.

In para (o), we have already talked about mining discharges. The proposed sediment discharges, for example massive discharges of sediment, which will include toxic waste, to be discharged into the water column at a depth of only 1200 metres water, warrant far more than what is currently in (o), which is o) Details of Mining Discharges, including a waste assessment and prevention audit;

In para (p), we have already spoken about the term stakeholder participation rather than consultation.

In para (q), as we have said earlier, current scientific information is that restoration is not possible. It needs to be clearly acknowledged in these discussions that many harmful effects for DSM are likely to be irreversible and irremediable - DSM should therefore not be allowed to proceed.

**Annex VIII (Closure plans)**

Firstly, on Norway’s point, supported by the Netherlands, we agree, but furthermore we suggest this is due to a fundamental issue - we believe that the separation of the assessment and the statement is artificial and confusing and inconsistent with the BBNJ EIA current text.

Paragraph (j) refers to restoration and remediation objectives and activities, and we support DOSI in this regard.

We have already noted that monitoring would need to be extremely long term if deep-sea mining were to go ahead - almost in perpetuity as previously noted.
In para (m), we note again that the environmental performance guarantee, which is the financial bond, is only applicable to closure, not to mining itself. This is a major gap.

In para (o), Again consultation rather than stakeholder participation is referred to, and more clarity is needed. It cannot be left open to contractor interpretation.

We also think it is important to remind delegates that the closure plan is not part of the environmental plans under regulation 11, meaning it is not subject to consultation. That needs to be remedied in the regulations.

Also, there is no reference to test mining. If test mining is carried out, and mining does not take place after that, does the closure plan apply?

Standards and Guidelines

We would like to highlight some major problems overall then we will turn to the introduction. But firstly, and taking into account Ghana’s comments for the African Group, the development was by an LTC which continues to hold its meetings in closed session, despite being asked repeatedly to hold open meetings, including by Assembly in 2017 and many States in last December’s meeting. This is not to detract from the hard work put in by LTC members, but is, we believe, a major institutional failing and a major failure in transparency. We also agree with Germany that these cannot be seen as effective regulatory elements, and share Costa Rica, Chile and Spain’s concerns about the process, as well as mandatory stakeholder participation. And we join New Zealand in saying that the current draft lacks measurable thresholds and that current public participation requirements are inadequate.

Turning to the overarching problems. Firstly we believe these are premature as the regulations are far from complete, with these standards and guidelines, including the EIA one, being based on the March 2019 version of the regulations.

Secondly there is no compulsory stakeholder participation. We think this gap is enormous and speaks for itself.

Thirdly, there is no requirement for independent scientists.

Fourthly, EIA (the process) and EIS (the document) are subject to two guidelines. The split is artificial and unhelpful and we join Norway in their observations. By the time the EIS is published, the EIA is complete. The consequence of this is that there is absolutely no requirement for public consultation in the EIA Standard, which is binding: only in the EIA Guidelines, leaving it up to the discretion of the Contractor. It is too late to ask the Contractor to go and acquire certain data - this is one reason that public participation, and independent scientific assessment is needed throughout the EIA stage, including at the scoping stage.

Fifth, There is no hearings process (either in EIA or in EIS). No opportunity for stakeholders question formally the scientists, or present their own evidence.

Sixth, There is no provision made for requiring further information, for amending the EIS, or for the EIS being developed at a later stage e.g. a different part of the contract area is intended to be mined, or where work has to be stopped because of unacceptable or unanticipated environmental effects and material changes made in the work program.
Seventh, the guidelines are not integrated with the Draft Regulations, such as the Fundamental Principles; effective protection of the marine environment; common heritage of mankind, etc. They assume that each application will be granted. There is next to no discussion of the precautionary principle (approach) (only under scoping; only one mention of the ecosystem approach, no discussion of effective protection of the marine environment.

**Part XI - compliance and enforcement**

**Paragraph 99**

We have 3 short points. Firstly, On para 99, paragraph 1, similar to the intervention of Sierra Leone, we suggest that the threshold of “poses a threat of serious harm to the marine environment” is too high a threshold. We contrast that with “may endanger the health or safety of any person”; a much lower threshold.

There should not be an obligation to prove (firstly) a threat, and secondly that the threat is of serious harm.

Instead, a risk of harm to the marine environment should suffice in this context. That would be consistent with the precautionary principle. After all, the convention in art 145 requires “effective protection for the marine environment from harmful effects”.

Secondly, we believe the word “otherwise” should be deleted. Otherwise it implies that there must be a breach of the terms of an exploitation contract, as well as a risk of environmental harm.

And Third, in paragraph (a), we believe that the 2nd part of the phrase “or until such time as the Authority and Contractor agree” should be deleted. This suggests the contractor’s agreement is required.

We believe that the structures and functions envisaged in Part XI are both unrealistic in their ambition and inadequate.

Ambitious, as I don’t think there is anyone in this room who believes that, if deep-sea mining by The Metals Company were to start in 2024, according to the 2 year rule and its announced intentions, that a fully functioning and effective inspection, compliance and enforcement regime can be in place in two short years.

Inadequate, since as we observed in the discussion earlier, real time monitoring by the ISA as the regulator, including of the deep sea and water column, is entirely lacking. We believe that is a sound reason that the ISA should not proceed with its rush to adopt regulations and give the light to commercial mining.

We also welcome Norway’s, Germany’s and the Netherlands’ comments on effective control. This is an essential aspect which has been ignored to date. Without effective control there cannot be real control over the contractor.

A process needs to be put into place to ensure that a test which is consistent with the Convention, rather than the current minimalist and formalistic practice, is put into place and implemented.