



Deep Sea Conservation Coalition ISA 27 Interventions (July - August 2022)

20/7/22

Thank you Madam facilitator and good afternoon delegates

Firstly, on Regulation 99, paragraph 1, we suggest that the threshold of “poses a threat of serious harm to the marine environment” is too high a threshold. The use of the word “serious” places the threshold far too high.

Any risk of harm to the marine environment, taken together with the precautionary principle is unacceptable.

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, also 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. The job of the ISA is to regulate, and the protection of the marine environment should not be contingent on the agreement of the contractor.

In the context of the previous statements made in Council this afternoon, we want to make it absolutely clear that the adoption of regulations will mean the start of seabed mining. We have discussed this earlier, but briefly stated, to name a few issues, the Council is only able to disapprove a plan of work with $\frac{2}{3}$ majority including a majority in each chamber, and even then it can only send the plan of work back to the LTC. There is no transparent framework in place for independent science. The LTC meets in closed session. It is far from clear that even provisional plans of work can be amended without the consent of the Contractor. There is no appeal from the recommendation of the LTC, but contractors can take a case to the Seabed Dispute chamber of ITLOS. And these are only some of the issues.

Further, contracts must not be granted as that will mean the start of seabed mining.

That is why a moratorium is essential.

That is why we earlier noted in our opening statement that we are grateful for the Global Alliance expressions of support for a moratorium by a number of Pacific states which have so much concern for the protection of the Ocean and so much at stake.

Proposed DSCC Intervention DR 103

DR 102

Thank you madam facilitator

We associate ourselves with the comments of Earthworks, Pew and DOSI as well as those of Costa Rica particularly on adaptive management. As Earthworks said, this DR is thin. For example, while including the removal of mineral resources, plume dispersal, and sound are to be monitored, there is no reference to species, either on the seabed or in the water column,

We have discussed this before. Adaptive management has no application to situations where, as here, there is insufficient information and the risks are too high for adaptive management to be consistent with the precautionary principle.

DSCC Intervention DR 103

In para 4, the contractor is given the opportunity to make representations, following which the Compliance notice may be withdrawn. There are no provisions for Council members, observers or others to make representations. There is no basis for only allowing the contractor to make representations and not to allow others to do so as well. In addition, any representation should be made public.

In para 6, there are no criteria attached to seriousness of the violation. This needs to include environmental effects consequent on the violation. This also gives rise to the issue of liability for the consequences of the violation. As we have suggested earlier, liability needs to be considered by Council. To date it has not been.

DSCC Intervention DR 104

Firstly we associate ourselves with the observations of Costa Rica about the environmental performance guarantee. It has no relevance to this provision.

Jamaica made some pertinent observations on this, but it is even worse than his comments since the environmental performance guarantee does not apply to mining at all, only to closing the mine, decades in the future. We have made this observation many times.

We associate ourselves with the many observations to the effect that the proposed addition about extinguishing the contractors's debt and putting an end to the dispute is unwarranted. It presupposes the outcome of the remedial action, and makes no reference to the environmental effects of the contractors' action, or to liability and commission a study evaluating natural capital and environmental costs (or externalities).

The larger issue is that it is not only the costs and expenses incurred by the Authority that the contractor must be liable for, but all effects, including environmental effects, of the violation. This would seem obvious, and is completely missing, due to the lack of a liability regime. Most delegates here would be familiar with enforcement proceedings under their national laws, and will be familiar

with the concept of polluter pays and that a breach of environmental provisions would attract liability for all resulting damage as well as cost. Again, that is why the ISA needs to discuss liability.

We believe that mitigation has no support in article 145 and prevention of harmful effects is what is required; no less. And we note again that remediation is unlikely to be possible, partly due to the essentially permanent nature of much of the damage.