

Deep Sea Conservation Coalition intervention
Agenda Item 11. The payment mechanism (including administration fees)
6 March 2018

Thank you Mr. President and good afternoon delegates

Our comments focus first and transparency and then two issues relating to test mining and biodiversity.

Mr. President, a few words about transparency and in particular the issue of interested persons. Transparency has many facets, and we would like to comment on other aspects later this week, but for now we wanted to highlight the issue of public participation and those who can be involved.

The Code Project, starting on page 23, clearly identifies the broad support among states for transparency and public participation. DSCC set out in its comments the so-called 3 pillars of public participation in the Aarhus Convention - being access to information, public participation and access to justice - or, in the case of the exploitation regulations, access to review procedures. The Aarhus Convention is endorsed by the CCZ Environmental Management Plan.

Mr. President, one specific issue is the definition of the term 'interested persons' in the draft regulations. We were heartened that the vast majority of comments endorsed a broad definition, with support for the use of the term "stakeholder" instead of "interested persons". Many delegates will have observed that the term stakeholders is used most often in this context, and we strongly support use of that term in the draft regulations too. It is common sense, as well as consistent with international practice. We also note and support the many comments that said that the proposed definition of interested persons is far too narrow and restrictive. When the Area and the Common Heritage of Humankind is the issue, there can be no restrictive requirement based on a so-called 'interest'.

Many comments, including those from New Zealand, Australia, South Africa, Algeria for the African Group and the Netherlands, as well as observers such as DSCC and IASS, made specific suggestions on how public input and submissions can be managed, and we commend them.

Another issue we highlighted in our submission on the draft regulations is the issue of test mining. In our view testing of equipment should be required as part of the process of preparing an EIA before an exploitation license is approved or fully approved.

It is worth noting that testing of mining equipment is not required under the exploration regulations, but if it does take place under an exploration license then a preliminary EIA and monitoring plan is required. The ISA regulations regarding the content of the EIA for the testing of mining equipment are quite detailed in the "Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area" (ISBA/19/LTC/8).

In the draft exploitation regulations testing of equipment prior to exploitation should be explicitly required. The testing of mining equipment and an evaluation of the environmental impacts thereof including 'ground truthing' any modeling done as part of a feasibility study and/or preliminary EIA should be a requirement - and be a component of the EIA submitted as part of the application for a plan of exploitation.

We also highlighted the concern over the potential loss of biodiversity in deep-sea mining. The theme of the discussion under this agenda item - “understanding the pathway to exploitation and beyond” - should also be read in the context of our understanding of the potential impacts on the marine environment along this pathway.

Two recent papers published in peer reviewed journals on the subject address this issue. One is entitled “Deep-sea mining with no net loss of biodiversity – an impossible aim”. The other is entitled “Scientific rationale and international obligations for protection of active hydrothermal vent ecosystems from deep-sea mining”.

So the questions we have are whether the Code will ensure that mining will not take place until biodiversity loss can be prevented or avoided?. If not, then how much biodiversity loss will the Code, that is to say the States Parties to the Law of the Sea Convention who are responsible for developing the Mining Code, permit to occur?

Over what time frame will the loss be permitted given that in many/most cases the loss will be irreversible on human timescales?

Can meaningful limits, thresholds and indicators be established in the regulations and enforced to be sure that the ‘permissible’ loss is not exceeded?

What about cumulative impacts and stressors on deep ocean ecosystems from climate change and other anthropogenic sources – something highlighted in the UN’s 1st World Ocean Assessment?

And finally, how will the ISA justify the biodiversity loss? What is the benefit to humankind as a whole (the common heritage of mankind) that would justify the loss of biodiversity in the Area?

Mr. President, these issues are framed by Article 145 of the Convention, which requires the ISA ensure effective protection for the marine environment from harmful effects from mining. These obligations are clear and create social expectations. The distinguished delegate from Cameroun mentioned the need for consistency with Sustainable Development Goal 14. We agree and would argue that the commitments to sustainable consumption adopted in SDG 12 should also guide the development of the regulations and decisions made by the ISA.

The danger we see is that the regulations may allow mining without a firm understanding of the potential impacts. The horse may be out let out of the gate so to speak with no turning back, and we will wake up in 20, 50 or 100 years to realize that serious damage to the marine environment, biodiversity loss, and species extinctions have occurred.

The Mining Code will be the product of the collective decision-making of the international community – or at least the 168 CP of UNCLOS, members of the ISA – in the second or third decade of the 21st century. A modern, open, transparent regime is required.

The pathway to exploitation must not be traversed blindly and in ignorance but with a clear, open eyed, understanding of the risks to biodiversity and the marine environment and a clear and enforceable agreement as to whether and to what extent adverse environmental impacts will be allowed to occur.

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