



**International Seabed Authority 25<sup>th</sup> Session  
25 February-1 March 2019**

Monday 25 February 2019

Agenda item 11: Draft Regulations for exploitation of mineral resources in the Area

**Guidelines and Standards (*Monday- Tues morning*)**

Thank you Madam President

This intervention first addresses Standards, and then Guidelines. They are separate and need separate discussion.

Clear and binding conservation standards and objectives are required to give effect to the Article 145 obligations.

These standards must of course be binding. That is, with respect, the whole point. Article 197 of the Convention requires "international rules, standards and recommended practices and procedures". Article 201 uses the same formulation. So rules and standards, on the one hand, are intended to be binding; recommended practices and procedures may be just that: recommended. Standards are not.

There is no specific provision for standards to be binding or provisions requiring they be in place before contracts are approved. We suggest that both provisions should be added.

We look forward to the Pretoria workshop in May 13-17, and welcome Australia's and the many earlier comments on the need for full transparency for those workshops.

As Germany said, the list of standards and guidelines is indicative and not complete. But we do suggest that when the agenda is developed for Pretoria, there should be separate treatment of standards and guidelines.

For instance, in Table 1 of the Secretariat Paper, there is only 1 entry for Standards; all the rest - over 20 - are suggested as guidelines. As Germany noted, this list is not exhaustive. These also need to be clarified. For instance, performance standards and environmental thresholds and indicators are listed as guidelines. These should be standards, and should be binding.

Standards could include, for example, strategic environmental goals and objectives (SEGOs) which DOSI talked about last year, as well as biodiversity standards as Germany mentioned. These are very important, and need work as DOSI just said, on regional as well as global scales.

We therefore suggest that the agenda for the workshop should be circulated well beforehand for stakeholders and experts to make suggestions.

*Madam President:* on the procedure of adoption of these standards:

DR 92 provides that the Commission shall recommend standards to the Council. DR 92 does not indicate whether this process will be transparent or broadly inclusive. The Secretariat paper states (11) that "Standard development should primarily be an industry-driven initiative". We disagree. As Germany indicated in their intervention, all stakeholders should be involved. We join DOSI in emphasising that other stakeholders and scientists have a crucial role.

DR 92 should have a mechanism for soliciting stakeholder feedback on draft standards and guidelines before these are presented to the Council for review and approval as well as a mechanism, as Pew suggested, for reviewing and updating standards as appropriate to ensure they reflect the Best Available Scientific Evidence, Best Available Techniques, Best Industry Practice, and Best Environmental Practice as those standards evolve.

### **Guidelines**

Turning to Guidelines:

Madam President, DR 93 provides that the Commission or the Secretary General shall issue guidelines and that these guidelines shall be "reported" to Council. It does not provide for an inclusive or transparent process of guideline development, nor does it offer the Council an opportunity to approve or reject guidelines; just to request that the guidelines be modified or withdrawn. The regulations should do both. The Commission added that the Commission or the Secretary-General shall keep under review such Guidelines in the light of new knowledge or information.

DR 93 would benefit from inclusion of a mechanism for soliciting stakeholder feedback on draft standards and guidelines before these are presented to the Council for review and approval as well as a mechanism for reviewing and updating standards and guidelines as appropriate to ensure they reflect the Best Available Scientific Evidence, Best Available Techniques, Good Industry Practice, and Best Environmental Practice as those standards evolve.

The regulations should also be clear on which guidelines are legally binding. The use of the phrase "reasonably practicable" throughout may affect the binding nature of any Guidelines. This phrase should be eliminated as it introduces uncertainty and makes it difficult to enforce. For example, Annex X states that contractors are required to "observe, as far as reasonably practicable, any guidelines which may be issued by the Commission or the Secretary General." What does this mean? Who decides the meaning of "reasonably practicable"? This phrase, we suggest, should be deleted.

Finally, Madam President, there is no specific provision for guidelines to be in place before contracts are approved. We believe this is essential.

Thank you

