

## **Summary of general comments and initial reactions made by representatives of Members and of Observers to the Facilitator's Text (ISBA/27/C/IWG/ENV/CRP.1) at the webinar on 28 February 2022**

Prepared by the Facilitator, Dr Raijeli Taga (Fiji), of the Informal Working Group on the Protection and Preservation of the Marine Environment

1. In line with the roadmap for work on the draft regulations on exploitation of mineral resources in the Area in 2022, as agreed by the Council at its last meetings in December 2021 (see ISBA/26/C/13/Add.1), on 28 February 2022, I hosted a webinar to receive general comments on the Facilitator's Text which is contained in the document ISBA/27/C/IWG/ENV/CRP.1. The road map also requests that I prepare a summary of those comments for the Council's meetings in March.
2. At the webinar, comments were made by representatives of 18 Members and by representatives of 2 Observers to the Authority.
3. As indicated at the webinar, I am presenting a summary of general comments and initial reactions and also address some issues that were raised. Since these touch upon the modalities of work, I address them by proposing a working method for negotiations of the Facilitator's Text by the Informal Working Group in March, but also beyond the meetings in March, along with a way forward for the meetings of the Council in July.

### ***Summary of comments***

4. Comments made by delegations relate to the Facilitator's Text and to the approach I have followed, to the coherence of the whole regulatory package, to specific regulations and to the modalities of work.
5. First, I thank all delegations for their positive comments and initial reactions to the Facilitator's Text that is viewed as a good and well-balanced basis for our based-text negotiations in the last two weeks of March. The approach and the fact that the Facilitator's Text was developed intersessionally have also been acknowledged.
6. Several delegations commented on the need to keep an eye on the coherence of the whole regulatory framework and the example of the issue of environmental impact assessment was used. One delegation observed that the Draft Regulations formally do not include standards and Guidelines and question whether their consideration will not expand the mandate of the Informal Working Group. Another delegation suggested that it would be best to focus on the Draft Regulations before the Standards and Guidelines. In relation to the completed phase one Standards and Guidelines, a delegation commended the Commission for its timely delivery.
7. All delegations stressed the importance of the highest environmental standards in the regulatory framework. One delegation suggested to include additional specific guidance on how to address serious harm by adding specific decision-making criteria for assessing the magnitude and duration of the environmental impact along with the recoverability of the environment itself. Another delegation commented on the lack of normative requirements for contractors to meet on environmental aspects in the regulatory framework. A delegation suggested to develop an uncertainties and knowledge gaps section as this common practice would serve to demonstrate that this is a work in progress. I would like to invite the proponent to make a proposal for consideration of the working group.

8. One delegation commented that Draft Regulation 44 is now very much streamlined and understandable. Several delegations indicated that a clear policy on the implementation of the precautionary approach should be developed.

9. Several delegations commented on the Draft Regulation 44 bis on Regional Environmental Management Plans (REMPs). One delegation found the text appropriate and expressed support to its structure while another delegation commented that this requires more development. One delegation mentioned that contractors should be deeply involved in the development and implementation of REMPs. One delegation expressed the view that, where appropriate, account be taken of any other existing area-based management tools and this can be done through exchange with competent international organizations.

10. One delegation commented that Draft Regulation 46 bis was a very good starting point on environmental impact assessments and that its insertion was very appropriate including as a basis to the latest standards and guidelines. A delegation commented that splitting environmental impact assessment from environmental impact statement could be confusing while the current text was lacking a hearing process with independent scientific information.

11. In respect of comments made at the webinar regarding test mining, as indicated in draft regulation 48 bis in the Facilitator's Text, I have suggested that further discussion should take place on these issues. Therefore, I invite proponents of text proposals on this matter to further explain them in the context of the Informal Working Group.

12. As regards the Emergency Response and Contingency Plan (Draft Regulation 53), a comment was made to make it part of the Environmental Plans.

13. With respect to the environmental compensation fund, one delegation commented that it could be useful to include a reference to the Finance Committee for the definitions of the rules of procedure and the matters raised in the box under draft regulation 56. Another delegation expressed the view that the use of the fund should be for compensation of environmental loss particularly caused by contractors' activities such as mitigation measures and ecosystem restoration. The same delegation added that guidelines regarding the collection, management and application of this fund must be in place before implementation.

### ***Modalities of work and way forward***

14. To address these comments as well as those which related to the modalities of work for our Informal Working Group, I propose the following working method for our March's meetings and beyond as well as a way forward.

15. I propose that from the meetings in March and beyond March, text-based negotiations of the Facilitator's text are conducted regulation by regulation, starting with Part IV, Part VI, Annex IV, Annex VII and Annex VIII. Two days are allocated for that purpose in the indicative programme of work. Lastly, as indicated during the webinar, the Council plenary has not had the opportunity to consider whether the schedule on the "use of terms and the draft regulations will be discussed by the plenary or an informal working group. In view of this, the inclusion of the references to proposals to terms in the schedule in the Facilitator's text should be considered preliminary, pending the decision of the plenary of the Council on how it will approach the schedule.

16. As for the standards and guidelines for which one meeting is devoted in the programme, I suggest that we begin in March with four draft standards and guidelines and that we proceed section by section rather than line-by-line at this stage, bearing in mind that the Draft Regulations

are still under negotiations and that the standards and guidelines will need to be reviewed when the text of the Regulations is stable. Please also bear in mind that the Legal and Technical Commission worked hard to complete phase one draft standards and guidelines for the Council to have an overview of how the regulatory framework is shaping up. I suggest that the following draft standard and guidelines be examined by the Group:

- Draft standard and guidelines for the environmental impact assessment process (ISBA/27/C/4);
- Draft guidelines for the preparation of environmental impact statements (ISBA/27/C/5);
- Draft guidelines for the preparation of environmental management and monitoring plans (ISBA/27/C/6 and Corr. 1); and
- Draft guidelines for the establishment of baseline environmental data (ISBA/27/C/11).

17. During the webinar, some comments referred to a need for clarification. Instead of requests for clarification, I propose that delegations make specific textual proposals for the benefit of the working group. Likewise, if delegations are of the view that their proposals do not seem to be reflected in the Facilitator's Text, please recall that you may submit specific textual proposals for the consideration of the informal working group. I believe that this method is more conducive to make progress at the current stage of text-based negotiations. Similarly, I invite proponents of the issues identified in the boxes of the Facilitator's text to further present their proposals and present specific textual proposal which the group can consider making progress.

18. At the webinar, a suggestion was also made to create a data sharing platform. In this connection, I wish to invite delegations participating in the informal working group to send textual proposals following a template which the Secretariat will post on the website of the Authority.

19. One delegation referred to environmental provisions in other Parts of the Regulations not allocated to our Informal Working Group. I propose that we concentrate first on the Parts and Annexes under consideration of the Informal Working Group and based on progress made that this question be discussed in plenary.

20. In light of specific textual proposals made in March, I intend to prepare a revised Facilitator's Text in the intersessional period for consideration by the Informal Working Group in July. As for the consideration of those four draft standard and guidelines as mentioned above, I propose to place boxes under each section to reflect the discussion in the Informal Working Group.

21. I look forward to actively engaging with all delegations on concrete and specific text proposals to the Facilitator's Text.

Thank you.

Suva, 16 March 2022