

ISA Session 27-III

Agenda Item: Inspection, Compliance and Enforcement WG - The Ocean Foundation Interventions

DR 102

On behalf of The Ocean Foundation, thank you Madame Facilitator. And thank you to the people and the government of Jamaica for their hospitality.

Dear excellencies, delegates and fellow observers: A brief note on underwater cultural heritage: we wish to note that without real time video monitoring, it is all but a foregone conclusion that operations would destroy, potentially without even knowing, any underwater cultural heritage (shipwrecks, human remains, or fossils). Real time video monitoring is absolutely essential to underpin robust regulations regarding the cessation of operations should underwater cultural heritage be discovered, and enforcement thereof.

DR 104 Note: this intervention was not delivered, due to time constraints.

On behalf of our organization and Oceans North we note that mitigation has no basis in article 145 - the requirement is the prevention of harmful effects; no less. Remediation is unlikely to be possible. This is due to the essentially permanent nature of much of the damage and the technical infeasibility of remediation measures. Including mitigation here assumes harm to the environment as the direct result of a contractor's failure to comply, undermining Article 145.

The Ocean Foundation supports comments against inclusion of the square bracketed proposal, and wish to point out that the bracketed language would be inconsistent with the way liability has been conceived elsewhere in the regulations.

Draft Regulation 26(8) states "The provision of an Environmental Performance Guarantee by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee."

Section 7 of the draft Standard Clauses for an Exploitation Contract (Annex X) on Responsibility and Liability explicitly "survives the termination of the Contract and applies to all damage caused by the Contractor regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term"