



Statement re Draft Regulation 31 ISBA/28/C/WOW/CRP.1 29 March 2023

The ICPC believes that it is critical to include specific provisions in the Exploitation Regulations addressing submarine cable protection in order to give meaning due and reasonable regard provisions in articles 87 and 147 of the Convention. Submarine cables are mentioned specifically in various parts of the Convention and constitute critical infrastructure the protection of which is of paramount importance for all States and civil society.

The package of proposals in draft Regulations 13, 15, 31, Annex 1, and Appendix 1, among others, is intended to minimize the risks to submarine cables of uncoordinated deep seabed mining, including potential (1) damage to submarine cables and (2) foreclosure of future submarine cable routes through large geographic areas due to contiguous exploitation areas, such as in the Clarion Clipperton Zone.

The package of submarine cable-related proposals is intended to promote coordination at the earliest possible stages of planning—both planning of exploitation and planning of submarine cable installation, and to address the fact that Plan of Work is developed in a closed setting with the Commission, which precludes submarine cable operators themselves from initiating coordination before the Plan of Work is approved, absent action by the contractor.

Regulation 31.1

The ICPC prefers the text in paragraph 1. alt. bis as set forth in the President's Text, ISBA/28/C/WOW/CRP.1 and agrees with the statements made by Australia, the United Kingdom, the United States. Paragraph 1. alt. bis addresses the twin issues of cable damage and cable route foreclosure. ICPC supports inclusion of the phrase "measures identified in the approved Plan of Work." Along with Australia, the ICPC supports the deletion of the bracketed language in 1. alt. bis stating "such as an easement or a mining exclusion zone with a reasonable radius," as this language is overly prescriptive and so specific that it might become outdated.

The ICPC does not support any of alt. 1, alt. 2, or alt. 3 on a standalone basis, although we see value in the proposal of the United Kingdom, as supported by Germany, to include both a modified paragraph 1 and 1. alt. bis.

On a standalone basis, each of alt. 1, alt. 2, or alt. 3 fail to address submarine cable coordination and protection in the contractor's Plan of Work, and each is otherwise too general in nature. Both alt. 1 and alt. 3 also condition compliance on the existence of Guidelines, which the ICPC believes inadequate to realize the cable protection provisions of the Convention, or to address the fact that some contractors have asserted that they do not have cable protection obligations at all. The inclusion of specific provisions in the Exploitation Regulations will ensure such obligations



are binding. In any event, no such Guidelines have been proposed or developed by the Authority.

The ICPC believes that if this regulation is to reference specific provisions in the Convention, it should include references to both articles 87 and 147, and their obligations of due regard and reasonable regard, which the ICPC believes have the same meaning.

Finally, to Norway's point, we see value in a modified reference to "activities and infrastructure," in order to capture submarine cable installation, operation, and repair.

Regulation 31.2

The ICPC prefers the text in the 2. alt. paragraph as set forth in the President's Text, ISBA/28/C/WOW/CRP.1, for the reasons stated by Australia, Norway, and the United Kingdom, among others.

ICPC does not support the proposed options in the original or modified paragraph 2. As the ICPC noted in its statement yesterday regarding Draft Regulation 2, article 157 of the Convention does not grant the Authority jurisdiction over other activities in the marine environment, unless they constitute "activities in the Area" as defined in Article 1 paragraph 3 of the Convention. At most, the Authority, in conjunction with Member States, should be facilitating coordination to give meaning to due and reasonable regard obligations in articles 87 and 147 of the Convention.