

## **Proposal by the Intersessional working group on DR 44 (General Obligations)**

- The intersessional working group on the general obligations contained in DR44 was not able to meet virtually. It has been working virtually from April 20 to May 22. The delegations from Canada and China participated actively.
- In a first working document distributed by 20April 2023, the Spanish delegation compiled the history of the wording of DR44 (See Annex I).
- By May 15 the Spanish delegation sent a first wording proposal of DR44. The main purpose of the new drafting was to present some criteria to simplify DR 44 without reducing its scope of application. Firstly, using definitions of flag States, Marine Environment, Exploitation in the Area; Secondly, using the language of article 145; Thirdly, considering the different legal nature of Standards and Guidelines in regulations 94 and 95. Fourthly, taking into account that the content of these general obligations is specified in the subsequent articles of Part IV, Annexes and Standards.
- The first column contains the wording of the negotiating text used in the first part of the 28th session (ISBA/28/C/IWG/ENV/CRP.1, 2 March 2023). The second column contains the proposal made by Spain with substantial comments made by Canada with which Spain agrees.

**SBA/28/C/IWG/ENV/CRP.1**

**I**

1. The Authority, sponsoring States, the Enterprise, Contractors and States competent for vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority shall each, within their respective competence plan, adopt, implement and modify measures necessary for ensuring effective protection of the Marine Environment, including rare or fragile ecosystems all forms of marine life as well as the habitat of depleted, threatened or endangered species from harmful effects directly or indirectly resulting from Exploitation in the Area, including from shipboard processing and from transportation of minerals to inland facilities, which may include inland processing in accordance with the Rules of the Authority, Standards and taking into account Guidelines referred to in regulation 45 and the applicable Regional Environmental Management Plan. To this end:

(a) In adopting and keeping under periodic review rules, regulations and procedures, as well as the Standards and Guidelines in accordance with the Convention and the Agreement, the Authority shall:

(i) Apply the precautionary approach and the ecosystem-based management approach to the assessment management and prevention of risk of harm to the Marine Environment from Exploitation in the Area;

(ii) Apply the Best Available Techniques and Best Environmental Practices taking into account the applicable guideline,

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**NEW PROPOSAL**

1. The Authority, sponsoring States, the Enterprise, Contractors, flag States and the States of registry of or having authority over installations, structures and other devices shall take necessary measures to ensure effective protection of the Marine Environment from harmful effects which may arise directly or indirectly from Exploitation in the Area, in accordance with Regulations, Standards and taking into account Guidelines referred to in regulation 45 and the relevant Regional Environmental Management Plan and to this end shall, as applicable in their respective areas of competence:

(i) Apply the precautionary approach and the ecosystem-based management approach to the assessment management and prevention of risk of harm to the Marine Environment from Exploitation in the Area;

(ii) Apply the Best Available Techniques and Best Environmental Practices;

(iii) Integrate Best Available Scientific Evidence in decision-making;

(iv) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation in the Area

(iv) bis Apply the polluter pays principle having due regard to the public interest; and

(iii) Integrate Best Available Scientific Evidence in decision-making, including all risk assessments and management undertaken in connection with environmental assessments, acknowledging knowledge gaps, and the management and response measures taken under or in accordance with Best Environmental Practices; and

(iv) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation, including through Stakeholder participation and the prompt public release of environmental data and information at regular intervals and in an accessible format through the Authority's website.

(iv) bis Take into account the approach that the polluter should bear the cost of pollution, endeavour to promote practices whereby those engaged in exploitation activities bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest.

(v) Include Underwater Cultural Heritage in the definition of marine environment. Thus, references to the environment include references to these objects which hereinafter are referred to as underwater cultural heritage (UCH) which has been more precisely defined in the UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage.

(vi) Ensure to minimize the direct or indirect act so as not to transfer damage or the likelihood of damage from one part of the environment to another or transform one type of pollution into another as stated in article 195 of the Convention. This especially related to avoiding toxic, persistent and bio accumulative substances.

(vi) Ensure that damage or hazards are not transferred to the marine environment and that one type of pollution is not transformed into another one. This is especially related to avoiding toxic, persistent and bio accumulative substances.

2. The Legal and Technical Commission shall make recommendations on the implementation of paragraphs 1 above as required.

3. No regulation in this Part shall be interpreted as preventing sponsoring States, the Enterprise and Contractors from taking, individually or jointly, more stringent measures in accordance with international law with respect to the prevention, reduction and where practicable elimination of detrimental effects on the marine environment.

(b) In taking all necessary measures to ensure that the Contractor carries out Exploitation in the Area in conformity with the terms of its contract and its obligations under the Rules of the Authority related to the effective protection for the Marine Environment from harmful effects, the Sponsoring State shall, as a minimum, assist the Authority to implement, , the measures set out under paragraph (a)(i) to (vi) above.

(c) In taking necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment ,including the coastline, ecosystem structure, function and resilience arising from Exploitation in the Area, the Enterprise and Contractors shall implement, *mutatis mutandis*, the measures set out under paragraph (a)(i) to (iii) above and demonstrate accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation , including through Stakeholder participation and the timely public release of environmental data and information on their respective activities at regular intervals and in an accessible format. In so doing, the Enterprise and Contractors shall apply a priority order to avoid, minimize, mitigate, and remediate shall Mitigate harm to the Marine environment restore, offset harm to the Marine Environment. and adapt the necessary measures to newly obtained information and data.

2. In adopting laws and regulations, in accordance with the Convention, to prevent, reduce and control pollution of the Marine environment from Exploitation undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be, States shall

implement, *mutatis mutandis*, the measures set out under paragraph 1(a)(i) to (vi) above.

2 bis. The parties mentioned in paragraph 1 shall:

(a) Apply the precautionary approach, and the ecosystem-based management approach to the assessment and management of risk of harm to the Marine Environment from Exploitation in the Area;

(b) Apply the Best Available Techniques and Best Environmental Practices;

(c) Integrate Best Available Scientific Evidence in decision making, including all risk assessments and management undertaken in connection with environmental assessments, and the management and response measures taken under or in accordance with Best Environmental Practices; and

(d) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation in the Area, including through Stakeholder participation and the timely public release of relevant environmental data and information at regular intervals and in an accessible format through the Authority's website.

(e) Take into account the approach that the polluter should, in principle, bear the cost of pollution, endeavour to promote practices

whereby those engaged in exploitation activities bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest.

(f) In implementing the regulations, act so as not to transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another as stated in article 195 of the Convention.

3. The Legal and Technical Commission shall make recommendations on the implementation of paragraphs 1 and 2 above.

4. No regulation in this Part shall be interpreted as preventing sponsoring States, the Enterprise and Contractors from taking, individually or jointly, more stringent measures in accordance with codified and customary based international law with respect to the prevention, reduction and where practicable elimination of detrimental effects on the marine environment.