



## International Cable Protection Committee Ltd.

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15 October 2019

### **BY ELECTRONIC SUBMISSION**

International Seabed Authority  
14-20 Port Royal Street  
Kingston, Jamaica  
[consultation@isa.org.jm](mailto:consultation@isa.org.jm)

*Re: Comments of the International Cable Protection Committee on the International Seabed Authority's Draft Exploitation Regulations*

To the International Seabed Authority:

The International Cable Protection Committee (“ICPC”) welcomes this opportunity<sup>1</sup> to comment on the current draft of the draft Exploitation Regulations of the International Seabed Authority (the “Authority”).<sup>2</sup> To give meaning to the “reasonable regard” obligations of the United Nations Convention on the Law of the Sea (the “Convention”) and ensure effective protection of submarine cables, ICPC believes that the draft Exploitation Regulations require further revision, with language that ICPC has developed in collaboration with the Government of France and has included in the attachment.

At present, the draft Exploitation Regulations do not pay such reasonable regard to submarine cables and pipelines. Draft Regulation 31(1) simply states that “Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area.”

ICPC continues to believe that this language is insufficient to protect existing submarine cables because it does not address submarine cable protection early enough in the development and review of the Contractor’s plan of work for exploitation. Instead, it suggests that submarine cable protection be addressed only once a Contract Area has been finalized.

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<sup>1</sup> International Seabed Authority, Note No. ISA/OLA/2019/245.

<sup>2</sup> Draft Regulations on Exploitation of Mineral Resources in the Area, ISBA/25/C/WP.1 (9 July 2018).

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ICPC believes that coordination at such a stage is too late in the process and increases the likelihood that issues between submarine cable and mining contractors will be addressed through liability rules and dispute settlement rather than coordination and planning mechanisms. As submarine cable operators know from working with other marine industries, particularly oil and gas companies and offshore wind farm operators, parties have the greatest opportunity for coordination and compromise at the earliest stages of the project planning process, before plans and financing are finalized and become difficult to change.

Given that certain Contractors take the position that they have a right to exclude submarine cables from their Contract Areas, ICPC believes it is imperative for the Exploitation Regulations to include a procedural mechanism to ensure that reasonable regard is paid to submarine cables and pipelines. As article 157(1) of the Convention provides that “the Authority is the organization through which States Parties shall, in accordance with this Part, organize and control activities in the Area,” ICPC believes that it is the Authority—through its regulations—that must operationalize the reasonable regard obligation.

ICPC therefore recommends that the Authority replace the existing language in Draft Regulation 31(1) pertaining to submarine cables with the attached new Draft Regulation that ICPC has developed in collaboration with the Government of France and included the submissions of ICPC and France in their submissions for the Authority’s September 2018 consultation and included as an attachment to this letter. The attached new Draft Regulation is labeled as Draft Regulation 33A, reflecting an earlier numbering of the draft Exploitation Regulations at the time of the September 2018 consultation.

ICPC does not seek to include any detailed, prescriptive coordination measures in the Exploitation Regulations. As ICPC’s members know from coordinating with other marine industries, parties need flexibility to address commercial needs, sea floor topology, and available technology, among other considerations. ICPC also prefers to encourage direct engagement between Contractors and submarine cable operators, as with the joint workshop organized by ICPC and the Authority in Bangkok on 29 and 30 October 2018. ICPC does, however, seek procedural requirements in the Exploitation Regulations to ensure that diligence and coordination take place, as reflected in the proposed Draft Regulation 31A.

ICPC therefore respectfully requests that the Authority consider the inclusion of the new proposed regulation in the Exploitation Regulations.

Respectfully submitted,

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Attachment

## Joint submission of the French delegation and the International Cable Protection Committee

### Draft regulation 33A

#### Reasonable Regard for Submarine Cables

1. Prior to submitting any proposed Plan of Work to the Commission, a Contractor shall exercise due diligence to identify in-service and planned submarine cables transiting or proximate to the area under application by using publicly-available data and resources. Contractors shall coordinate directly with operators of such submarine cables using the best available tools, in order to reduce the risk of damage to any submarine cable.
2. To be deemed complete for purposes of regulation 10, any proposed Plan of Work submitted by a Contractor to the Commission shall identify any in-service or planned submarine cables transiting or proximate to the area under application, summarize efforts to coordinate with submarine cable operators using the best available tools, and describe any measures agreed to mitigate the risk of damage to any in-service or planned submarine cable.
3. The Commission shall decline to recommend Council approval for a Plan of Work that fails to demonstrate that the Contractor has exercised due diligence to identify in-service and planned submarine cables that transit or are proximate to a Contract Area and has coordinated with operators of such submarine cables to mitigate the risk of damage to any in-service or planned submarine cable transiting or proximate to a proposed Contract Area.
4. In reviewing any proposed Plan of Work, the Commission shall consider the effects of that Plan of Work, in aggregate with other Plans of Work, on the ability of a submarine cable operator to route a new submarine cable through significant portions of the Area, without significant re-routing.
5. For future submarine cables that may be planned to transit through or proximate to an area covered by a Plan of Work previously approved by the Authority, the Contractor shall coordinate directly with operators of such submarine cables using the best available tools in order to reduce the risk of disruption to exploitation activities authorized by the Plan of Work and damage to any submarine cable.