

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 20 April 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.

DR 44 (General obligations)

OPTION 1

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 and Standards and taking into account Guidelines referred to in regulation 45 and the relevant Regional Environmental Management Plan.

2. To this end they shall, as applicable in their respective areas of competence, apply the principles and approaches contained in regulation 2.

DR 44 (General obligations)

OPTION 2

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

(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.

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