

The Ocean Foundation Intervention delivered during Part 2 of the 29th Session of the
International Seabed Authority Council

Thematic Discussion on Underwater Cultural Heritage
July 19, 2024

In this intervention we will address some textual issues including free prior informed consent, the protection and safeguarding of intangible underwater cultural heritage for present and future generations, definitions, and the proposal for a Committee on Intangible Underwater Cultural Heritage.

In an effort to define intangible heritage, we suggest a definition taken from the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, a convention with 183 Parties, as follows:

“Intangible Underwater Cultural Heritage” means the practices, representations, expressions, knowledge, skills, as well as the instruments, objects, artefacts and cultural spaces associated therewith that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. {Convention for the Safeguarding of the Intangible Cultural Heritage Art 2}

We suggest adding to draft Regulation 2: Principles, Approaches and Policies a new letter (i) with text as follows: *“The protection and safeguarding of intangible underwater cultural heritage including the free prior informed consent of Indigenous People and of Local Communities.”*

In response to question 1, we suggest adding a new para 3 in the text of DR35:

3 Protection and Safeguarding of Intangible Underwater Cultural Heritage

1. *Contractors and Applicants shall consult and cooperate in good faith with Indigenous Peoples through their own representative institutions in order to obtain their free prior and informed consent before taking any action that may affect them or their Intangible Underwater Cultural Heritage. {we take this from the United Nations Declaration on the Rights of Indigenous Peoples Art 19}*
2. *The Authority shall at all times ensure the protection and safeguarding of Intangible Underwater Cultural Heritage.*

We do however consider that a new paragraph can be added to Regulation 44 on general obligations which would be that:

3. *No application for a plan of work shall be granted which does not protect and safeguard Intangible Underwater Cultural Heritage.*

We would also like to suggest *adding provisions to establish a **Committee on Intangible Underwater Cultural Heritage***. We are open to discussion on the exact section of the regulations this would best fall under, but in such a regulation we suggest that the Committee would:

a. Liaise with Indigenous Peoples, local communities, and stakeholders in intangible Underwater Cultural Heritage

b. Provide recommendations to the Council on matters relating to Intangible Underwater Cultural Heritage and

c. Advise the Legal and Technical Commission on all matters relating to Intangible Underwater Cultural Heritage

This is similar to the Committee established under the UNESCO 2003 convention text which, under the UNESCO 2003 convention, is made up of persons qualified in the various fields of intangible cultural heritage and provides guidance for best practices and makes recommendations for safeguarding intangible heritage. Committees like this have also been established in various UN and other international fora to provide expert advice and ensure Indigenous participation in discussions.

We will also submit these proposals in writing, and would be glad to discuss these proposals with any interested parties. Cultural heritage is part of the common heritage of humankind — finding methods to safeguard and preserve it from harm is key to ensuring the rights of Indigenous people, local communities and humankind.