

ISA 29th Session, Part II – Reading of the Draft Consolidated Text

Oral Statement by the Federal Republic of Germany

Delivered in July 2024

Regulation 49 – Env Monitoring

We support the suggestion to name this **section 3** “*Environmental Management and Monitoring*”, instead of referring only to monitoring.

Germany would like to **reintroduce the proposal for an independent monitoring programme** for the first 7 years of a mining operation, which appears to have been lost in this latest consolidated draft. An independent monitoring programme would allow the Authority to verify monitoring data from the Contractor. It would also support the Contractor in building a solid monitoring programme, which the Contractor can then continue. Our proposal is for the Contractor to conduct environmental monitoring throughout the lifetime of the Contract. In addition to that, we propose an independent monitoring programme for the first 7 years. The reason is that the Authority is legally required to supervise and control activities in the Area but in practice, it relies on monitoring and data from the Contractor. This form of self-monitoring is not in line with good governance. An independent monitoring programme for the early years of a mining project would help the Authority exercise due diligence in its regulatory responsibilities.

Because seabed mining would be a new industry, no one currently has a blueprint for a solid environmental monitoring programme. Therefore, our proposal is for the Authority and the Contractor to learn alongside each other. By having an independent monitoring programme for the first 7 years, the Authority can verify the monitoring data from the Contractor while also working with the Contractor to ensure their monitoring programme reflects best practice. This could help ensure compliance from the start, and can therefore be regarded as a form of proactive compliance assurance.

Against this background we propose a **paragraph 5** for DR 49, similar to the provision that appears to have been lost, which could read:

5. In addition to the monitoring programme conducted by the Contractor, the Authority shall organise for independent experts to monitor the effects of activities in the Area for the first seven years of commercial production. This independent monitoring programme shall be financed by the Contractor. The Commission shall evaluate and compare the results of both monitoring programmes to verify monitoring data, prepare a report to the Council with its findings, and support the Contractor in establishing a robust monitoring programme.

As for other comments regarding DR 49, we suggest that **paragraph 1** needs to be reworded to clearly spell out an obligation of the Contractor *“measure and monitor effects of its activities in the Area on the Marine Environment and evaluate such effects against the relevant environmental thresholds and baseline data”*. The current paragraph 1 only requires an evaluation of the environmental thresholds and the *“risks to Environmental Effects”* which we believe sounds confusing. Indeed, an evaluation of thresholds is not the relevant task here. Instead, the environmental effects on an activity must be measured and evaluated against the thresholds. Currently the obligation to monitor environmental effects is only contained in paragraph 3 whereas it might be better placed in paragraph 1. We note that DR 51(a) contains a similar obligation, with useful wording, which could be combined with DR 49.

In **paragraph 2(b)**, like Ghana, we seek clarification of what is meant here when it is referred to an *“Environmental Management Plan”* as reference to the EMMP is already given in Para 2a.

We also suggest that **DR 49 and 50** need to separate the obligations of an Applicant to prepare an EMMP at the time of application from the obligation of a Contractor to implement and maintain an EMMP, including a monitoring programme, throughout the lifetime of a Contract. The draft regulations currently seem to conflate these two actors and their respective tasks.