

Mr. Olav Myklebust
President of the Council
International Seabed Authority
14-20 Port Royal Street
Kingston, Jamaica

Dear President,

We, the undersigned representatives of Indigenous Peoples and accredited Observers to the International Seabed Authority, wish to register our sincere concern over two matters. Firstly the omission of the vast majority of text submitted by the Intersessional Working Group on Underwater Cultural Heritage (UCH IWG) in the President's Revised Consolidated Text. And secondly, the circulated letter from a number of contractors dated 14 January 2025.

Omission of the Submitted Text from the Revised Consolidated Draft

We are concerned by the omission in the Revised Consolidated Text of the vast majority of the text submitted by the UCH IWG, which was submitted to the President on 2 November 2024. The November 2024 submission to the President was the outcome of multiple consultations and ultimately a silence procedure where silence was not broken, including by representatives of The Metals Company / Nauru Ocean Resources, Inc. who participated in the discussions, even though they are not accredited observers.

Regarding the Revised Consolidated Text, we note the inclusion of the UCH IWG's proposed Regulation 35 alt. However, the Revised Consolidated Text excluded other key provisions that supplement Regulation 35 alt. We highlight essential text such as Paragraph 4 bis (the requirement to protect and safeguard UCH) and 4 ter (proposing a UCH Committee), and the definitions proposed in the Schedule. Those definitions are central to other provisions including draft Regulation 35 alt. It is impossible to discuss and resolve one text without another.

So we respectfully request insertion into the Revised Consolidated text the text submitted by the Working Group in its entirety.

Objection to and Response to Contractors' Letter

We wish to register our strong concern that the circulated letter from a number of contractors dated 14 January 2025 purports to lay claim to the right to conduct damaging activities in the deep sea based on "legitimate expectations", mentioned four times. There is no legitimacy to contractors' claims to mine the deep sea, and they can have no expectations that they will be able to do so. Contractors do not enjoy any kind of "legitimate expectation". They chose to invest in the absence of a regulatory framework and in fact demand a high "hurdle rate" to compensate for the risk they took. We are also concerned that the letter refers to "responsible development" rather than "sustainable development".

There is insufficient scientific evidence to base a decision about deep-sea mining, and this is not something that contractors can wish away. Effective protection for the marine environment and the precautionary principle/approach are critical considerations as well as legally binding requirements. The letter ignores the lack of an environmental baseline; researchers have found that the task of establishing a baseline will take many more years (Diva Amon et al. "Assessment of scientific gaps related to the effective environmental management of deep-seabed mining". [138 Marine Policy](#). 2022).

[The Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment.](#)

Astrid Puentes Riaño, observed something which Indigenous Observers have long known: that the balance of life on Earth depends on the ocean, which provides food, regulates temperatures and currents, absorbs heat and carbon from the atmosphere, produces oxygen, even in the deep sea, and provides habitat for millions of species. Further, this Report states that *“Indigenous Peoples, subsistence fishers and small island developing States are heavily reliant on marine resources for food and livelihoods. They are thus particularly vulnerable to the negative impacts of deep-sea mining, which threaten fisheries, a vital revenue source for island nations, contributing up to 84 per cent of government revenue in the Pacific.”*

Finally, in this context, we wish to observe that the communication by the contractors is highly inappropriate. It is for sponsoring States, together with Members and Observers, to engage in the Council, including on regulatory matters - not contractors. It is the Council, not contractors, that holds the authority to regulate activities in the Area, as established by Article 162, while the Convention provides no basis for distributing reports from contractors, emphasizing that they are subject to regulation, not regulators themselves.¹ Contractors are the regulated, not the regulators. The distribution of the letter in question sets a concerning precedent.

We request that this letter be distributed to the Council members and observers in the same way the contractors’ letter was distributed.

Signed,




Solomon Pili Kaho'ohalahala
Maui Nui Makai



Edwin Lindsey
Maui Nui Makai



Teurumereariki Teavai-Murphy
Tetiaroa Society



Alanna Matamaru Smith
Te Ipukarea Society



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¹ Consultation with Council including by non-governmental organizations is governed by article 169, which provides in paragraph 3 that “3. The Secretary-General may distribute to States Parties written reports submitted by the non-governmental organizations referred to in paragraph 1 on subjects in which they have special competence and which are related to the work of the Authority.” There is no authority for distributing reports by contractors, and as observed above, it would be inconsistent with the scheme of the Convention whereby it is States, not contractors, that are responsible for regulation.