PROPOSAL CONCERNING POTENTIALLY POLLUTING WRECKS IN THE AREA

Kingdon of Spain

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Disclaimer

This report is based on written notes of the meeting and is intended only as an informal, good-faith account of the discussions and the positions expressed by delegations. It is not an official record, nor an authoritative statement of any delegation's position. Because the notes were necessarily condensed and taken in difficult circumstances, some statements may be incomplete or misinterpreted. Any errors, omissions or inaccuracies are unintentional; the authors apologise for them and would welcome corrections or clarifications.

0 Executive Summary

The Kingdom of Spain (**Spain**) has proposed the inclusion in the future Regulations on Exploitation (**Regulations**) of a specific provision on potentially polluting wrecks (**PPWs**) that may be discovered or affected by mining activities in the Area. The initiative is strictly preventive and environmental in purpose and is structured around four principles: prevention, notification, cooperation and proportionality. It is not intended to establish a general regime governing wrecks or to confer on the International Seabed Authority (**ISA** or **the Authority**) powers falling outside its mandate, but rather to prevent exploitation activities from triggering or aggravating pre-existing risks to the marine environment.

The meeting of 22 July 2026 at the Authority revealed broadly favourable support for the proposal. Germany, Bangladesh, Switzerland, the United Kingdom, France, Italy, Indonesia, India and the Philippines (which submitted its position in writing) supported, or expressed openness to, the inclusion of a specific provision. Russia raised technical reservations concerning the definitions, the relationship with contingency plans, the status of State vessels and the obligations of contractors. China was the only delegation to question the timing and appropriateness of the forum, although it acknowledged that the clause could be included if necessary and feasible and stressed the need to take the International Maritime Organization (**IMO**) framework into account.

The principal areas of convergence were the need to coordinate the future clause with DR34 (on notifiable events) and DR35 (on underwater cultural heritage), to distinguish between pollution that has already occurred and a potential risk of pollution, to move the definitions to the Schedule, to adopt a case-by-case approach, to avoid imposing automatic liability on a contractor for a historical hazard it did not create, and to take into account that a PPW could be also underwater cultural heritage. Cooperation with the IMO, other competent international organizations and specialized scientific bodies was also considered essential.

Several issues remain open: the precise definition of PPWs; the extent of the safety zone; the regime applicable to sunken State vessels; the response to inaction by the flag State; the possible reference to international instruments other than UNCLOS; and the handling of sensitive information concerning defence and national security.

As a way forward, it appears advisable to develop a self-standing clause, complementary to DR34 and DR35, containing general definitions in the Schedule, an initial precautionary zone capable of

scientific adjustment, limited obligations on the contractor to suspend activities and notify, a secure information-sharing system, and specific mechanisms for cooperation with the IMO. Consideration could also be given to establishing a small intersessional group of interested States, with support from the Secretariat, to prepare revised and legally balanced drafting.

1 Background, purpose and essential content of the Spanish proposal

Spain's proposal proceeds from the recognition that future activities for the exploitation of mineral resources in the Area may interact with pre-existing wrecks containing hydrocarbons, heavy metals, chemical substances, munitions or other materials capable of causing serious harm to the marine environment, generally labelled as PPWs. Although the number of such wrecks in the Area appears to be relatively limited, disturbing them could have disproportionate effects on deep-sea ecosystems characterized by fragility, slow recovery and a high degree of scientific uncertainty.

Spain therefore proposed incorporating into the future Regulations a specific provision on PPWs that may be discovered or affected by activities subject to the regulatory regime of the Authority. The initiative is strictly preventive and environmental in purpose: it is not intended to establish a general regime governing wrecks or to confer on the Authority powers belonging to flag States, the IMO or other competent organizations.

The proposal was initially submitted in the form of a non-paper and was subsequently developed, under a "Friends of the President" format, into a draft clause accompanied by guiding questions intended to identify delegations' areas of agreement, flexibility and possible red lines.

Spain's intervention on 22 July explained that the proposal rests on four elements:

– Prevention: temporary suspension of activities in the vicinity of the wreck while the risk is assessed.
– Notification: immediate notification to the ISA Secretary-General of the discovery and its location.
– Cooperation: participation, as appropriate in the circumstances, of the Authority, States, the flag State, the registered owner, the contractor, the IMO and the competent scientific and technical bodies.
– Proportionality: adoption of effective measures, but limited to what is reasonably necessary to prevent, mitigate or eliminate the hazard.

The concept of "removal" used in the proposal does not necessarily imply the physical recovery of the wreck, but encompasses any appropriate measure to prevent, mitigate or eliminate the risk. The Spanish draft also addresses the applicable definitions, transmission of information, arrangements for cooperation, the position of sunken State vessels, the relationship with underwater cultural heritage and human remains, the application of standards and guidelines, and the legal position of the contractor.

2 Spain's position and issues submitted for discussion

Spain stressed that the provision would have a carefully delimited scope: it would apply only where an activity in the Area discovered, might affect, or aggravated the risk associated with a PPW. The aim is not to create a comprehensive regime governing ownership, immunity, liability, underwater cultural heritage or the law of armed conflict, but to establish a minimum environmental safeguard within the Exploitation Regulations.

The Spanish delegation acknowledged that the Authority has no general competence over wrecks and that the solutions contained in the 2008 Nairobi Wreck Removal Convention (**WRC**) and other maritime instruments cannot simply be transposed to the Area. It nevertheless considered that those

difficulties do not justify leaving the Regulations silent in the face of an identifiable risk that exploitation activities may trigger or aggravate.

Regarding sunken State vessels, Spain proposed respecting their legal status and the consent of the flag State, while linking the continued enjoyment of rights over the vessel to a primary responsibility to cooperate in preventing or mitigating environmental harm. The proposal is framed as an obligation of responsible stewardship, not as a new general rule of international responsibility.

As regards the contractor, Spain distinguished between its obligations of due diligence, prevention, notification and cooperation, on the one hand, and responsibility for the historical hazard, on the other. Discovery of a PPW should not automatically render the contractor responsible for the wreck or require it to finance its removal. At the same time, however, the contractor should not be compensated for operational consequences that ought reasonably to have been anticipated during exploration or preparation of the plan of work.

The guiding questions submitted to delegations included, inter alia: the need for and placement of a specific clause; its relationship with DR34 and DR35; the location of the definitions; the use of the terms "hazardous" or "polluting substances"; the extent of the safety zone; notification time limits; references to other treaties; contractors' obligations; the position of State vessels; proportionality of measures; cooperation with the IMO; and the possible establishment of a database on PPWs.

3 Proceedings of the meeting of 22 July 2026

3.1 General assessment of the proposal

As summarised before, the discussion revealed broadly favourable support for addressing the risks posed by PPWs. Germany, Bangladesh, Switzerland, the United Kingdom, France, Italy, Indonesia, India and the Philippines supported, or were open to, the inclusion of a specific provision. Russia did not reject the need to address the issue, although it made observations concerning the definitions, consistency with the remainder of the Regulations, the status of State vessels and contractors' obligations.

China was the only delegation to raise a preliminary reservation as to whether the Authority was the appropriate forum and whether the present stage of the negotiations on the Exploitation Regulations was the right time to introduce a new clause. It nevertheless accepted that such a clause could be included "if necessary and feasible" and stated that the IMO regulatory framework should be taken into account. The Philippines, for its part, supported the proposal from a preventive and precautionary perspective, linking it to the obligations to protect the marine environment under Part XII of UNCLOS.

There was therefore no outright opposition to the environmental substance of the initiative. Differences focused on legislative technique, systematic placement, the allocation of responsibilities and coordination with other provisions and instruments.

3.2 Relationship with DR34 and DR35

Germany and Switzerland emphasized the need to distinguish the PPW regime from the Notifiable Events system under DR34. That provision appears to concern a significant release that has already occurred, whereas the Spanish clause is intended to operate preventively before any release materializes. Russia argued that PPWs are directly connected with contingency and response plans and that any new regulation should therefore be coherently integrated into that system. The United Kingdom favoured cross-references to DR35, supplemented by consideration of other instruments and the work of the IMO. India raised the possibility of combining the clause with DR35. And the Philippines supported placing it in section 6, alongside the provisions on emergencies, incidents and notifiable events.

Spain considered that the clause has an autonomous rationale, while complementing DR34 and DR35: the former because the clause would allow action before a significant release occurs; and the latter because a PPW may simultaneously contain human remains, constitute underwater cultural heritage, or be a sunken State vessel.

The most coherent solution appears to be a self-standing clause accompanied by cross-references enabling the different regimes to be distinguished and coordinated.

3.3 Definition and material scope of PPWs

Bangladesh proposed distinguishing between:

– inactive or dormant wrecks that do not present a material environmental risk;
– wrecks that are already polluting; and
– potentially polluting wrecks that could release hazardous substances if disturbed.

This distinction would allow the new clause to be reserved principally for potential risks, while releases that have already occurred could remain subject to DR34.

Russia proposed a general definition of polluting substances applicable throughout the Regulations, rather than only to PPWs. Italy and the Philippines agreed that the definitions should be moved to the Schedule on the Use of Terms and Scope.

The need was also raised to clarify whether the concept of a wreck encompasses only the remains of ships or might also include the remains of aircraft, rockets or missiles. This issue will need to be resolved to avoid uncertainty as to the material scope of application.

3.4 Safety zone and risk assessment

The Spanish proposal initially provides for suspension of activities within a radius of 500 metres. The United Kingdom advocated a case-by-case approach, considering the characteristics of the wreck and its surrounding environment.

The Philippines supported immediate suspension but proposed that 500 metres should constitute a minimum distance capable of being extended or otherwise adapted by the Authority, with the advice of the Legal and Technical Commission (**LTC**) and competent experts. Relevant factors identified included the nature and quantity of the substances, hydrographic conditions, sediment transport, ecological sensitivity and the structural condition of the wreck. It also suggested considering the "zone of impact" methodology used in discussions on environmental thresholds.

There is therefore a basis for retaining an initial precautionary zone, while allowing its extent and configuration to be modified based on a specific scientific assessment.

3.5 References to external treaties and cooperation with the IMO

Russia and Switzerland opposed express references to treaties other than UNCLOS, particularly where those treaties are not binding on all members of the Authority.

The United Kingdom was more favourable to taking other instruments and the work undertaken within the IMO into account. China, Indonesia, the Philippines and other delegations likewise emphasized the need to cooperate with the IMO and draw on its technical expertise. The Philippines proposed a general reference to "IMO conventions and protocols, as appropriate", rather than specifically citing the Nairobi Convention or the 1973 Protocol.

The compromise formula appears to be to avoid rigid references to particular treaties, while allowing their concepts, technical criteria and accumulated experience to be taken into account through a general reference to relevant IMO instruments and work.

3.6 Obligations and position of the contractor

Russia argued that contractors should not be subject to additional obligations to search for and generally identify all PPWs. Nor should they automatically be assigned an obligation to remove a historical hazard they did not create.

Spain agrees that a contractor should not become responsible for a wreck merely by discovering it. However, once it knows of or discovers the wreck's existence, reasonable obligations of precautionary suspension, notification and cooperation should be triggered.

The Philippines supported immediate suspension and the establishment of a protective zone, leaving the subsequent risk assessment and determination of definitive measures to the Authority and its technical organs.

It will be necessary to specify the standard of due diligence required of the contractor during exploration and preparation of the plan of work, as well as the consequences of a failure to identify a wreck where such failure could reasonably have been avoided.

3.7 Notification, information-sharing and affected States

Russia stressed the importance of having adequate information sufficiently in advance. The Philippines proposed strengthening notification to coastal States liable to be directly affected by transboundary pollution, in accordance with Articles 198 and 199 of UNCLOS.

Spain likewise emphasized the need for both quantitative and qualitative knowledge of the risks posed by PPWs in the Area. The establishment of a database or centralized information mechanism could facilitate prevention and planning. However, some information may concern national defence, the location of military vessels, the presence of munitions, human remains or title to public property.

Accordingly, the regime should combine:

– sufficient operational information for the Authority, contractors and potentially affected States;
– early transmission of information in the event of risk; while also providing for
– safeguards for confidentiality, security and the protection of national interests.

The Secretariat could play a central role in the collection, processing and transmission of such information, in cooperation with the IMO, States and competent scientific bodies.

3.8 Sunken State vessels

Russia insisted on respect for the legal status of sunken State vessels. Italy raised two questions: how reliably to determine that a wreck is a State vessel, and what should be done if the flag State fails to respond to the hazard.

The Philippines considered that immunity and the consent of the flag State should continue to guide application of the clause, while the mechanisms for consultation, operational direction and urgent response should be clarified where there is an imminent risk of serious harm to the marine environment.

A possible solution would be to maintain priority consultation and cooperation with the flag State, accompanied by a graduated procedure for notification, requests for information and technical assistance. Cases involving a serious, urgent and imminent hazard would require particularly careful regulation to reconcile sovereign immunity with the obligation to protect and preserve the marine environment.

3.9 Proportionality and a case-by-case approach

The United Kingdom advocated a case-by-case approach and a balanced allocation of responsibilities among the various actors. This position is compatible with Bangladesh's proposed distinction between different categories of wrecks, the concerns regarding a fixed safety zone, and the principle of proportionality advanced by Spain.

The response should be tailored, inter alia, to:

- the nature of the wreck and the substances present;
- the risk of release or disturbance;
- the structural condition of the wreck;
- the hydrographic and ecological characteristics of the site;
- the nature of the exploitation activities;
- the presence of human remains or underwater cultural heritage; and
- the possible status of the wreck as a State vessel.

The clause could provide for an initial suspension and precautionary zone, followed by an individualized assessment determining the extent, duration and content of the measures required.

4 Areas of common ground among delegations

The interventions reflected broad agreement that PPWs present an environmental risk that should not fall outside the future Regulations. Although differences remain as to timing, placement and the precise formulation of the provision, no delegation categorically denied the desirability of providing some mechanism for prevention, notification and response.

There was also a common understanding of the need to coordinate the clause with DR34 and DR35, clarify the definitions, distinguish between pollution that has already occurred and potential risk, and avoid regulatory duplication. Delegations further agreed that the response should be based on cooperation among the Authority, States, contractors, the IMO and competent scientific bodies; that measures should be proportionate, scientifically grounded and adapted to the circumstances of each case; and that a contractor should not automatically be required to assume responsibility or bear the cost of a historical hazard it did not create.

The need to respect the status of sunken State vessels was likewise recognized, without leaving situations of serious or imminent risk without an effective response, as was the need for sufficient and timely information on PPWs while protecting data relating to defence, national security and other sensitive interests.

On that basis, there appears to be both political and legal scope for continuing the work through informal consultations or a small intersessional group of interested and/or like-minded States, with support from the Secretariat and advice from the IMO, with a view to developing a self-standing clause complementary to DR34 and DR35 that is technically workable and compatible with UNCLOS and the institutional framework of the Authority.

5 Assessment and possible ways forward

The discussion demonstrates that there is a sufficient basis for continuing work on a clause concerning PPWs. The principal question no longer appears to be whether the risk should be considered, but how to regulate it without duplicating other regimes, disturbing the institutional balance of the Regulations, or imposing disproportionate responsibilities.

Future drafting could be structured around the following elements:

1. A self-standing clause coordinated through cross-references to DR34 and DR35.
2. General definitions included in the Schedule, clarifying the scope of the concepts of “wreck” and “polluting substance”.
3. A distinction between inactive wrecks, wrecks that are already polluting, and potentially polluting wrecks.
4. An immediate obligation on the contractor reasonably to suspend activities and notify the discovery, without assigning it automatic responsibility for the historical hazard.
5. An initial precautionary zone of 500 metres, capable of being enlarged, reduced or otherwise configured on a case-by-case basis in accordance with a scientific assessment.
6. A framework for cooperation among the Authority, States, the contractor, the owner, the IMO and competent scientific and technical bodies.
7. Consideration of relevant IMO instruments and work, without the need expressly to cite particular treaties.
8. An information-sharing system allowing risks to be identified and assessed, subject to safeguards for confidentiality and security.
9. Early notification to States potentially affected by transboundary pollution.
10. A specific procedure for sunken State vessels combining immunity, consent and cooperation with an effective response to serious or urgent risks.
11. The subsequent development of technical standards or guidelines in cooperation with the IMO and other competent organizations.
12. The establishment of a small intersessional group of interested States to prepare revised drafting with the support of the Secretariat.

Spain therefore invites all Member States to indicate their interest in participating in the preparation of a provision on PPWs for possible incorporation into the Regulations. To that end, Spain proposes that a series of meetings be convened, with the support and cooperation of the ISA Secretariat, with a view to developing and agreeing upon the text of such a provision.