

Deep-Ocean Stewardship Initiative (DOSI)
Statements to the 25th Session of the ISA Council (Part I)

<http://dosi-project.org>

26th February 2019

Agenda Item 11: Draft Regulations for exploitation of mineral resources in the Area.

- Implementing the precautionary approach in activities in the Area (ISBA/25/C/8)

Thank you, Madam President.

The Secretariat's note explicitly focuses on the procedural aspects of the precautionary approach, which are undeniably important. However, we should not forget, as the Secretariat's note briefly mentions, the other two dimensions, namely the institutional capacity of the ISA to implement the precautionary approach and the substantive measures to protect the marine environment.

The Deep Ocean Stewardship Initiative would like to stress that the overarching goal of applying a precautionary approach is to ensure effective protection of the marine environment, pursuant to Article 145 of the Convention. Measures taken in the name of the precautionary approach would need to meet this goal of environmental protection.

Substantive measures may include the development of regional environmental management plans and the designation of no-mining areas. A further substantive measure could be the protection of vulnerable marine ecosystems, including, but not limited to hydrothermal vents and cold-water corals. This is already provided for under the Exploration Regulations, although to the best of our knowledge, no action has yet been taken in this respect. Specifically, regulation 33, paragraph 4 of the Exploration Regulations for Polymetallic Sulphides requires the Commission, and we quote, '*to develop and implement procedures for determining, on the basis of the best available scientific and technical information...whether proposed exploration activities in the Area **would have serious harmful effects on vulnerable marine ecosystems***'. If so, the Commission is required to manage those activities in a way that **prevents** such serious harmful effects or to **not authorize the activities**. DOSI asks the Authority to consider substantive measures for the protection of vulnerable marine ecosystems as part of a precautionary approach.

Our final point concerns the threshold used by the ISA when applying the precautionary approach. In its Advisory Opinion, the Seabed Disputes Chamber noted that states are required to apply a precautionary approach as part of their due diligence obligation. This obligation applies '*where **there are plausible indications of potential risks***.' This threshold differs from that in Principle 15 of the Rio Declaration, which refers to 'threats of **serious or irreversible damage**'. DOSI suggests considering whether the threshold articulated by the Seabed Disputes Chamber could be an appropriate standard for the Authority, to reflect the importance of applying a precautionary approach to seabed mining as a new industry.

Thank you, Madam President.