



INTERVENTION AT COUNCIL MEETING 18 JULY 2018

The Council President's statement to the LTC at the conclusion of the March 2018 Council meeting requested that the LTC "examine ways and means to pay reasonable regard to other activities in the marine environment, such as navigation, laying of submarine cables and pipelines, fishing and scientific research."

The Council President's request regarding reasonable regard for submarine cables and pipelines reflects the language of article 147 of the Convention, which provides that activities in the Area be conducted with reasonable regard for other activities in the marine environment, and vice versa. As explained in the judgment of the International Court of Justice in the *Fisheries Jurisdiction Case*, "reasonable regard" means that activities must be reconciled and co-exist.

Unfortunately, the revised Draft Regulations do not reflect any further ways and means to pay such reasonable regard to submarine cables and pipelines. Instead, what was previously Draft Regulation 26 has been renumbered as Draft Regulation 33.

Draft Regulation 33 provides that "Contractor shall exercise due diligence to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area."

ICPC continues to believe that the current language in Draft Regulation 33 is insufficient to ensure protection of existing submarine cables because it does not address submarine cable protection early enough in the development and review of the Contractor's plan of work for exploitation. Instead, it suggests that submarine cable protection be addressed only once a Contract Area has been finalized. ICPC believes this is too late in the process. As submarine cable operators know from working with other marine industries, parties have the greatest opportunity for coordination and compromise at the earliest stages of the project planning process, before plans and financing are finalized and become difficult to change.

ICPC therefore continues to recommend a few additional changes to the draft Exploitation Regulations:

- Require mining Contractors to perform due diligence using publicly-available charts and other materials to identify in-service and planned submarine cables, coordinate directly with operators of such submarine cables, and address their protection in any Plan of Work;
- Provide for the LTC to assess mining Contractor Plans of Work to account for submarine cables and decline to recommend Council approval for a Plan of Work that fails to address protection of submarine cable in a proposed Contract Area; and

- Ensure that LTC recommendations and Council actions on applications for exploitation activities do not foreclose routes for future submarine cables through mining areas.

ICPC does *not* seek detailed, prescriptive measures in the Exploitation Regulations. As ICPC's members know from coordinating with other marine industries, parties need flexibility to address commercial needs, sea floor topology, and available technology, among other considerations. ICPC does, however, seek procedural requirements in the Exploitation Regulations to ensure that diligence and coordination take place.