



Stakeholder Survey (ISBA/Cons/2015/1)
International Seabed Authority
14-20 Port Royal Street
Kingston, Jamaica
consultation@isa.org.jm

May 15, 2015

Re: Comments on “Developing a Regulatory Framework for Mineral Exploitation in the Area”

Thank you for the opportunity to comment on the International Seabed Authority’s (“ISA”) March 2015 Report *Developing a Regulatory Framework for Mineral Exploitation in the Area* (“Regulatory Framework”). These comments are submitted on behalf of the Center for Biological Diversity (“the Center”), a nonprofit corporation that works through science, law, and policy to secure a future for all species hovering on the brink of extinction. The Center is dedicated to the preservation, protection, and restoration of marine biodiversity and ecosystems throughout the world. The Center has over 800,000 members and online activists and has long been involved in efforts to protect the species and ecosystems of the high seas to ensure the survival and recover of imperiled marine mammals, birds, and other species that live, forage, breed, and migrate there. Recently, the Center filed a lawsuit challenging the United States Government’s issuance of exploratory permits for deep sea mining without the required environmental analysis (see attached complaint).

The Center has a particular interest in the Regulatory Framework’s provisions for environmental review. Currently, the Regulatory Framework requires individual environmental impact statements (“EIS”) and environmental management plans (“EMP”) for mineral exploitation project approval (Section II, Part II, page 11). The Center shares the concerns voiced by the Deep-Ocean Stewardship Initiative (“DOSI”) that the Regulatory Framework emphasizes single project approval and environmental assessment without an equal emphasis on a *regional* Strategic Environmental Assessment and a *regional* Strategic Environmental Management Plan. In addition, the Center agrees with DOSI that the establishment of a standing independent Review Board for environmental issues would strengthen the environmental review process, provide continuity across contractors, and ensure a more equitable balance between administering mining activities and ensuring effective environmental protection.

Not only does the Center support the comments of DOSI, but we share the concerns voiced by the Deep Sea Mining Campaign and its partners. In particular, because deep sea mining has the potential to cause severe and irreparable damage to ocean ecosystems, implementation of the precautionary principle is imperative in guaranteeing adequate protection of the marine environment.

The Center also recommends two additions to the Regulatory Framework to ensure thorough, scientific, and transparent environmental analysis. First, we support a meaningful public notice and comment process in the environmental review of mineral exploitation plans. Second, the ISA must deny applications for exploration that involve any significant environmental impacts.

1. Public Notice and Comment in Environmental Review of Mineral Exploitation Plans

The Regulatory Framework provides for an “open, inclusive and cost-effective decision-making process . . . for the review of specific documents by interested parties.” (Section 2, Part 2, page 18). It recognizes the need for a working paper “to be drafted setting out the public participation options and procedures available, including independent expert review(s).” The Center emphasizes the need for a meticulous and clear public notice and comment process for deep sea mining. As stated in the Regulatory Framework, “mankind as a whole has . . . a vested interest” in the exploitation of mineral resources in the high seas; not only should the public be given an opportunity to voice their concerns and interests in ISA-permitted activities, but the public’s concerns must be addressed before any exploitation permits are granted.

Environmental documents (such as an EIS or EMP) must be widely available to the public. The documents could be conspicuously published on the ISA’s website, which already provides session documents and selected decisions, or via another means that ensures widespread dissemination. They should also be sent via email to any parties who sign onto an “interested parties” list to ensure adequate distribution. Because deep-sea mining projects are complicated and providing substantive comments will take time (reviewing technical documents, data, political and economic implications, financial review, etc.), the ISA must ensure not only adequate notice of environmental documents up for review, but an adequate timeframe to allow for thorough and detailed comments. Comments could be submitted to the ISA directly, and then undergo a yet-to-be determined review process.

The ISA review process must contain a standard to ensure that all comments are adequately considered. This standard – which will hopefully be proposed in the working paper drafting ISA public participation options – must ensure substantive evaluation of all comments. An independent review board would be best suited to evaluating public comments. Finally, when issuing an exploration permit, the ISA must include with the final permitting decision an explanation of the ISA’s deliberative process, incorporating responses to all material concerns raised in the public process.

In sum, public notice and comment will allow members of the international community, including independent scientists, to raise issues regarding deep-sea mining exploitation plans, and give an independent review board an opportunity to consider and address them before the ISA makes a final permitting decision.

2. Deny Permits Involving Significant Environmental Impacts

Any exploitation plan that involves significant and unavoidable environmental impacts must be denied. As DOSI states in their comments, “restoration of nodule, sulphide, and crust areas is highly unlikely for many reasons . . . [b]ecause of the slow rates of abyssal ecosystem recover, even if restoration appeared to be technologically, logistically and financially feasible, it would require decades to evaluate its efficacy.” Not only do scientists recognize that deep-ocean ecosystems may never recover from deep-sea mining, but our baseline/general knowledge of these ecosystems in general is minimal. Scientists are constantly discovering new species, and new relationships between benthic ecosystems, fish, and the entire food web. There is little understanding of how sediment plumes from deep-sea mining operations would affect benthic ecosystems, and to our knowledge no research exists on the effects of toxic materials stirred up by mining operations. Therefore, if an environmental document (EIS or EMP) identifies significant environmental impacts, those impacts are likely underreporting the true environmental damage.

Not only do we know little about the deep ocean, but the precautionary principle dictates that the ISA not issue permits until mining companies in the fact of uncertain impacts (i.e., the ISA can only permit mining companies once they affirmatively demonstrate they can act without significant deleterious impact). The comments of the Deep Sea Mining Campaign and its partners highlight the need to refrain from permitting deep-sea mining in the face of undefined impacts. They cite the UN World Charter which states that “activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, where potential adverse effects are not fully understood, the activities should not proceed.” If the ISA is serious about fulfilling this mandate, it must not authorize any activities which pose widespread and unpredictable harms.

The Regulatory Framework recognizes that “development of a precautionary risk management framework is fundamental to the delivery of [environmental] protection goals” and highlights “effective protection for the marine environment from harmful effect” as a “high level issue” to be incorporated into the framework. (Section 4, page 43). The Regulatory Framework also recognizes that the ISA is operating in a “data deficient environment, particularly as regards resource data and environmental data.” (Section 4, page 41). In light of the lack of data on the deep ocean, there must be a particular emphasis on precautionary risk management, and the Center encourages the ISA to develop a robust process for assessing environmental documents.

Besides these two main points, we also draw the ISA's attention to two other issues:

- The ISA must require, and not simply “request” separate documents for each exploitation area (Section 2, Part 2, page 8). Requesting separate plans only when there are “material” difference between “exploitation areas” improperly allows the mining companies to define “material” differences. Furthermore, separate environmental documents for each area must be analyzed in the context of cumulative impacts, either in a regional Environmental Impact Statement or the equivalent.
- Independent review panels with real authority are necessary to guide the ISA through many stages of the environmental review process. While the potential for a review panel is mentioned at various points of the Regulatory Framework, an independent panel of scientists would be particularly useful in assessing environmental documents and ensuring they properly evaluate effective protection of the marine environment. (See, e.g., Section 2, Part 2, Pages 12, 13, 18). These panels must have the authority to deny exploitation permits if they determine that environmental impacts are unacceptable.

Thank you for the opportunity to comment on the Regulatory Framework. The Center hopes these comments will assist the ISA in incorporating transparent and thorough public participation in environmental review and ensuring environmental review leads to significant, substantive measures to protect marine resources and ecosystems. The Center gives express consent to make our contact details and submission publically available, and we would welcome the opportunity to be a part of the ISA stakeholder group. Please contact me should you have any questions.

Sincerely,



Emily Jeffers
Staff Attorney, Oceans Program
Center for Biological Diversity
ejeffers@biologicaldiversity.org