



# ISA'S CONTRIBUTION TO THE CONSERVATION AND SUSTAINABLE USE OF MARINE BIODIVERSITY BEYOND NATIONAL JURISDICTIONS

This policy brief outlines the relationship between the role and mandates of the International Seabed Authority (ISA) and the provisions of the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (2023 Agreement). The 2023 Agreement focuses on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. ISA, the organization responsible for managing and controlling activities in the Area (the seabed and ocean floor beyond national jurisdiction), has a critical role in achieving the objectives of the 2023 Agreement.

## Status and contribution of ISA to the objectives of the 2023 Agreement

The 2023 Agreement aims to conserve and sustainably use marine biodiversity in areas beyond national jurisdiction, including the high seas and the Area.<sup>1</sup> As the trustee of the Area and its resources, ISA plays a crucial role in achieving these objectives.

The 2023 Agreement emphasizes consistency with the United Nations Convention on the Law of the Sea (UNCLOS), ensuring the ISA's mandate over marine scientific research and technology transfer in the Area is strengthened.<sup>2</sup> The ISA already plays a

vital role in disseminating research results and facilitating technology and knowledge transfer, particularly to developing States.

## ISA's contribution to marine genetic resources

While the ISA does not regulate access to marine genetic resources (MGRs) under the 2023 Agreement, it contributes to knowledge generation and technology transfer related to biodiversity conservation. ISA contractors have collected genetic data and information on biological communities through their exploration activities, contributing to the ISA DeepData repository. Additionally, the ISA's Sustainable Seabed Knowledge Initiative (SSKI) aims to expand knowledge of deep-sea biodiversity through the description of new species.<sup>3</sup> ISA will share this information to support the Clearing House Mechanism under the 2023 Agreement.

The ISA's efforts to increase knowledge and share genetic information contribute to non-monetary benefits outlined in the 2023 Agreement. Furthermore, the ISA Finance Committee's work on developing a formula for the equitable sharing of financial benefits from activities in the Area is directly relevant to the 2023 Agreement. This formula, based on principles of proportionality, revealed preferences and social welfare functions,

<sup>1</sup> Article 2 of the 2023 Agreement states that the objective of the treaty is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of UNCLOS and further international cooperation and coordination.

<sup>2</sup> Specifically, Article 8 (3), establishes that the promotion of international cooperation in marine scientific research and in the development and transfer of marine technology shall be consistent with UNCLOS. This means that, as far as marine scientific research and development and transfer of marine technology in the Area are concerned, the role and mandate of ISA under Articles 143, 144, 256, 273 and 274 of UNCLOS is strengthened within the broader context of the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction.

<sup>3</sup> Through SSKI, ISA is planning to increase knowledge on deep-sea biodiversity and production of biogeographic and phylogeographic maps to assess evolutionary history, connectivity and resilience of deep-sea ecosystems, by describing one thousand new species from our oceans collected during exploration activities in the Area.

ensuring equitable benefit sharing from common goods.<sup>4</sup> The 2023 Agreement can utilize this mechanism to implement its provisions on sharing monetary benefits derived from MGRs.

## The role of ISA in area-based management tools, including marine protected areas

Part III of the 2023 Agreement addresses area-based management tools (ABMTs), including marine protected areas (MPAs) in areas beyond national jurisdiction. While the 2023 Agreement grants Parties the right to submit proposals for ABMTs, it mandates collaboration and consultation with relevant bodies like the ISA. This ensures that proposals impacting the Area meet the requirements and leverage the ISA's expertise.

Article 19 (2) of the 2023 Agreement provides that any proposals relating to the establishment of ABMTs, including MPAs under the 2023 Agreement, can only be submitted by its Parties. In so doing, States Parties have the duty to collaborate and consult with global and sectoral bodies in the development of such proposals. This entails those proposals for ABMTs impinging on the Area will need to meet such requirements. Under Article 22 (1), where proposed measures are within the ISA competence, the COP may make recommendations to Parties and to ISA itself to promote the adoption of those relevant measures through ISA within the limits of its mandate. This is to ensure that, in making its decisions, the COP does not undermine and fully respects the competences of the relevant global, regional, subregional and sectoral bodies.

The 2023 Agreement also mandates regular consultations between ISA and the Conference of the Parties (COP) to coordinate measures adopted under their respective frameworks,

promoting coherence in managing activities in areas beyond national jurisdiction.

The ISA's extensive experience in developing, implementing and reviewing regional environmental management plans (REMPs) for areas like the Clarion-Clipperton Zone, along with its establishment of areas of particular environmental interest, demonstrates its capabilities in ABMTs. ISA has engaged over 450 experts from over 55 countries in developing REMPs, emphasizing its commitment to stakeholder engagement and data-driven decision-making.

ISA's REMP process aligns with the requirements of the 2023 Agreement, including adherence to the criteria outlined in Annex 1. The scientific knowledge and data generated through this process can support evidence-based decision-making and monitoring of ABMTs under the 2023 Agreement.

## Environmental impact assessment and strategic environmental assessment

Part IV of the 2023 Agreement outlines rules for conducting environmental impact assessments (EIAs). While Parties are obligated to conduct EIAs for activities in areas beyond national jurisdiction, the 2023 Agreement recognizes the ISA's existing EIA framework for activities in the Area. Article 29 stipulates that the 2023 Agreement's EIA procedures do not apply when an assessment under an existing legal framework, deemed equivalent to the requirements of the 2023 Agreement, has been conducted.

Over three decades, ISA has developed a comprehensive EIA regime for activities in the Area, encompassing regulations and recommendations for assessing potential environmental impacts. The ISA's framework includes guidelines on baseline studies, monitoring, reporting and addressing impacts on marine biodiversity on the seabed and water column. ISA has also established

<sup>4</sup> With only a few studies on the topic, the Finance Committee conducted pioneering work in identifying an equitable sharing formula for a common goods, which is developed taking into account proportionality, revealed preferences and social welfare functions with the objective to ensure that Members welfare is increased to the maximum extent possible without worsening off other Members.

a publicly accessible global database containing environmental data collected by contractors.

As negotiations on regulations for mineral resource exploitation progress, ISA Member States are incorporating detailed EIA provisions into the Mining Code. These provisions would require contractors to prepare EIAs, environmental impact statements and environmental management and monitoring plans. The ISA's EIA legal framework aligns closely with the requirements of the 2023 Agreement, including procedures related to screening, scoping, impact and evaluation, prevention, mitigation and management.

The ISA's work on developing standards and guidelines to complement the exploitation regulations is relevant to Article 38 of the 2023 Agreement, which tasks its Scientific and Technical Body with developing standards and guidelines for EIA processes. The ISA's draft standards and guidelines, under review by the Council, address many aspects outlined in Article 38, including thresholds, impact assessments, cumulative impacts, public consultation and notification.

## Capacity-building and transfer of marine technology

ISA is obligated to design and implement capacity-building mechanisms, particularly for developing countries, to promote technology transfer and expand opportunities for participation in activities in the Area. This commitment is enshrined in UNCLOS, the 1994 Agreement and various ISA strategic documents.

The 2023 Agreement recognizes the importance of cooperation in capacity-building and technology transfer to achieve its objectives. While the ISA cannot implement all capacity-building initiatives outlined in the 2023 Agreement, its existing capacity development programmes and strategy enable it to contribute significantly. ISA can support the objectives of the 2023 Agreement through various means, including:

- **assisting developing countries in conducting marine scientific research:** through the ISA Partnership Fund, the ISA can support research necessary for biodiversity conservation and sustainable use.
- **providing technical support to developing countries:** ISA can offer guidance and expertise to ensure the application of the best scientific evidence, knowledge and practices for effective biodiversity conservation.
- **fostering cooperation and partnerships:** ISA can facilitate collaboration among stakeholders at regional and global levels to achieve shared capacity development goals.
- **contributing to needs assessments and sharing lessons learned:** ISA can leverage its experience to identify capacity development and technology transfer needs, promoting effective resource allocation.
- **empowering women in deep-sea science:** ISA can promote gender-responsive capacity development activities to ensure equitable participation in ocean science and conservation.
- **developing human resources and technical expertise:** ISA can support education and training initiatives to enhance expertise in ocean resource conservation and sustainable use.
- **strengthening institutional capacity and regulatory frameworks:** ISA can assist developing States in building robust governance structures and frameworks for managing activities in areas beyond national jurisdiction.
- **raising awareness, reviewing and monitoring capacity development activities:** ISA can promote transparency and accountability in capacity development efforts, maximizing efficiency and minimizing duplication.

## Institutional cooperation and coordination between ISA and the 2023 Agreement's Treaty bodies

The 2023 Agreement establishes a COP rather than permanent institutions like ISA. The COP's functions, outlined in Article 47, include promoting cooperation and coordination with relevant bodies, including ISA, to ensure coherence in efforts to conserve and sustainably use marine biodiversity.

To ensure its mandate is upheld and enhanced coordination is achieved, ISA could consider establishing a permanent dialogue with the COP. This dialogue would be particularly crucial for ABMTs and EIAs, areas where both ISA and COP have responsibilities.

## Financial resources and mechanisms

The 2023 Agreement establishes a mechanism for providing financial resources, including a voluntary trust fund, a special fund and access to the Global Environment Facility (GEF) trust fund. The GEF trust fund can support capacity-building projects related to marine biodiversity conservation, potentially benefiting ISA initiatives. Further clarification is needed on how ISA, through its capacity

development activities, could access the GEF trust fund to expand its efforts.

The ISA Partnership Fund, established in 2022, supports capacity development and marine scientific research aligned with the objectives of the 2023 Agreement. The ISA Partnership Fund promotes research in the Area, provides opportunities for scientists from developing States to participate in research programmes, and contributes to implementing the ISA's Action Plan in support of the UN Decade of Ocean Science for Sustainable Development.

### BBN Agreement Review



## Conclusion

In its 30 years of existence, ISA has accumulated significant experience and made substantial contributions on matters relevant to the implementation of the 2023 Agreement. As the UNCLOS-designated body responsible for managing activities in the Area, ISA's involvement is crucial for achieving the objectives of the 2023 Agreement.

The 2023 Agreement recognizes the ISA's existing mandate and seeks to ensure

consistency with UNCLOS. The 2023 Agreement reaffirms the ISA's responsibilities in overseeing activities in the Area under UNCLOS and the 1994 Agreement.

While the full extent of the interplay between the 2023 Agreement and the role of ISA remains to be seen, it is essential to determine whether ISA Members will have additional responsibilities related to activities in the Area, particularly concerning Parts II, III and IV of the 2023 Agreement, if they become Parties to the 2023 Agreement.



## ABOUT THE INTERNATIONAL SEABED AUTHORITY

Made up of 169 Member States, and the European Union, ISA is mandated under the UN Convention on the Law of the Sea to organize, regulate and control all mineral-related activities in the international seabed area for the benefit of humankind as a whole. In so doing, ISA has the duty to ensure the effective protection of the marine environment from harmful effects that may arise from deep seabed related activities.