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Response to the consultation on the Working draft –
Exploitation regulations (ISBA/Cons/2016/1)

Submitted to the International Seabed Authority on
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1 Our organisation

[Seas At Risk](#) (SAR) is an umbrella organisation of environmental NGOs from across Europe that promotes ambitious policies for marine protection at European and international level. Seas At Risk currently has [34 NGO members](#) in 17 countries, representing millions of European citizens that care deeply about the oceans. Members are all national or international environmental non-governmental organisations.

Located in Brussels, Seas At Risk works to help drive European and international marine and maritime policies in a sustainable direction. While Seas At Risk pursues issues by participating in governance processes at international level (e.g. International Maritime Organisation), EU level (working with the European Institutions) and regional level (e.g. OSPAR, the regional fisheries Advisory Councils), our member organisations play an important role by helping to ensure the essential link to national settings.

Seas At Risk staff keep the member organisations informed of relevant policy developments and emerging issues, and individual member organisations help to ensure that national government delegations to international meetings are properly briefed and aware of the concerns of their national environment sector. They also help monitoring member states' progress on implementing internationally agreed policy and provide Seas At Risk staff with a pool of expertise they can benefit from.

In support of this work, Seas At Risk collaborates with European, international and regional NGOs; facilitates exchange of information between members; gathers, analyses and disseminates information; coordinates joint responses to policy developments and public consultations; organises workshops and seminars; and highlights environmental challenges and policy developments through its external communications work.

Seas At Risk works on deep sea mining with a focus on EU policy developments (deep sea mining being one of the priority sectors of the EU Blue Growth strategy), and links this to the international level via the Deep Sea Conservation Coalition (which is observer in the ISA), of which Seas At Risk is a steering group member.

2 General comments on the development of the regulatory framework.

Developing regulation on the use of the Common Heritage of Mankind is not only a challenging task, it is one which will affect populations all around the globe and several generations to come. Seas At Risk therefore welcomes the opportunity to comment on the first working draft of the Exploitation Regulations.

Rather than commenting on the draft regulations, we want to emphasise that a fundamental debate about the need for deep sea mining still needs to be held, before permitting any kind of deep sea mining. As steering group member of the Deep Sea Conservation Coalition, Seas At Risk would like to underline its support for the DSCC position on deep sea mining (see below).

The priority approach to the consumption of mineral resources should be one of sustainability, reuse, improved product design and recycling of materials rather than exploring for new sources of minerals, including in the deep-sea. If after a full assessment of alternatives, it is demonstrated that deep-sea mining is needed and should be permitted to occur, it should not take place until appropriate and effective regulations for exploration and exploitation are in place to ensure that the full range of marine habitats, biodiversity and ecosystem functions are adequately and effectively protected, including through a network of marine protected areas and reserves.

As long as those conditions are not fulfilled, we call on the International Seabed Authority to immediately stop granting new deep sea mining exploration licenses and to refrain from issuing exploitation licenses.

**DSCC position Statement: Deep sea mining
July 2015**

The deep ocean is a vital force within the Earth system and must be protected from harm. The priority approach to the consumption of mineral resources should be one of sustainability, reuse, improved product design and recycling of materials rather than exploring for new sources of minerals, including in the deep-sea. If deep-sea mining is permitted to occur, it should not take place until appropriate and effective regulations for exploration and exploitation are in place to ensure that the full range of marine habitats, biodiversity and ecosystem functions are adequately and effectively protected, including through a network of marine protected areas and reserves.

The regulations and their framework must be robust and include:

- clear conservation and management objectives;
- transparent and enforceable procedures including access to information, public participation, and review procedures;
- requirements based on the precautionary and ecosystem approaches and the polluter pays principle;
- publicly available, comprehensive, prior environmental impact assessments, based on extensive, high quality environmental baseline information, and independent review procedures.

They should also ensure that significant adverse impacts on vulnerable marine ecosystems (VMEs) and ecologically or biologically significant areas (EBSAs) are prevented and that other serious harm to the marine environment does not occur. Protected areas must be established to achieve agreed objectives and cumulative impacts from mining and other activities and sectors must be also considered.

The development and adoption of any deep-sea mining exploration and exploitation regulations must be transparent and participatory and any mining activities permitted thereafter must respect the common heritage of humankind and ensure real benefits to society as a whole. Mechanisms for liability and redress must be established, and research and other initiatives to promote conservation and sustainable management must be implemented. Management must be effective, accountable, and transparent with ongoing monitoring, compliance, enforcement and transparent review procedures.

Source: [DSCC position Statement: Deep sea mining July 2015](#)

We justify our demand by the following:

Protecting the deep sea is ISA's prime responsibility: The International Seabed Authority's prime mandate is to protect the deep sea (Article 145, UNCLOS) and to carry out its activities for the benefit of mankind as a whole (Article 140, UNCLOS). It is extremely worrying to note that reference to the Common Heritage and Benefit of Mankind appears but once in the draft regulation: in the Preamble. Ensuring activities are only allowed for the benefit of mankind as a whole requires fully transparent procedures, a wide public debate, assessment of the distribution of economic, environmental, social effect and their geographic, social and generational distribution.

ISA has an obligation to avoid serious harm to the marine environment: Recent research outcomes (see e.g. [MIDAS research highlights](#)) indicate a concrete risk that deep sea mining would lead to serious irreversible harm. Article 162, 2.x of UNCLOS states that the Council shall disapprove all areas for exploitation by contractors or the Enterprise in cases where substantial evidence indicates the risk of serious harm to the marine environment.

Protecting the deep sea first and foremost requires an ecosystem based approach - the scientific knowledge base for this is still lacking: Recent research outcomes, such as those of the MIDAS project (see [MIDAS research highlights](#)), have highlighted the huge uncertainties and gaps in data and knowledge about the deep sea ecosystems. One thing is clear however: deep sea ecosystems are highly vulnerable, slow growing, have low resilience and provide ecosystem-services crucial for all life on earth. Multi-year research efforts are clearly still needed to build the knowledge basis necessary for science-based decision-making and management processes regarding the use of deep sea resources. Scientists therefore already previously called for halting the approval of new underwater mining contracts until further environmental controls are put in place¹. In parallel, we also recommend ISA takes up its research mandate and promotes independent research on deep sea ecosystems with a view to their protection.

The need for a strong precautionary approach means looking for more sustainable alternatives: The risks for long term or irreversible serious harm to the marine environment, as well as the huge uncertainties about impacts and gaps in data and knowledge require a strong precautionary approach. This also implies avoiding to get locked-in by a potentially harmful technology. There is a concrete risk, given the investments made in technology development and exploration, that once the industry starts actual mining, it will be very difficult to reverse the process. Following the European Environment Agency's precautionary principle lessons (see below) a precautionary approach would aim to identify and assess less harmful alternatives, so as to avoid dependency on high-risk technologies. We therefore request first and foremost a full assessment of the future need for deep sea mining under various scenarios (and for a time horizon at least up to 2050) with a comparison (including economic, social and environmental impacts, benefits and risks) with all alternatives offered by the transition to a circular economy, i.e. enhancement of recycling, better product design, repairing, sharing, use of new materials etc. This should also include enhancement of ecological and social standards in terrestrial mining and encouragement of the transition to democratic structures in mineral exporting countries.

The precautionary principle in practice: The European Environment Agency's 12 lessons

- 1) Acknowledge and respond to ignorance, as well as uncertainty and risk, in technology appraisal and public policy- making.
- 2) Provide adequate long-term environmental and health monitoring and research into early warnings.
- 3) Identify and work to reduce 'blind spots' and gaps in scientific knowledge.
- 4) Identify and reduce interdisciplinary obstacles to learning.
- 5) Ensure that real world conditions are adequately accounted for in regulatory appraisal.
- 6) Systematically scrutinise the claimed justifications and benefits alongside the potential risks.
- 7) Evaluate a range of alternative options for meeting needs alongside the option under appraisal, and promote more robust, diverse and adaptable technologies so as to minimise the costs of surprises and maximise the benefits of innovation.
- 8) Ensure use of 'lay' and local knowledge, as well as relevant specialist expertise in the appraisal.
- 9) Take full account of the assumptions and values of different social groups.
- 10) Maintain the regulatory independence of interested parties while retaining an inclusive approach to information and opinion gathering.
- 11) Identify and reduce institutional obstacles to learning and action.
- 12) Avoid 'paralysis by analysis' by acting to reduce potential harm when there are reasonable grounds for concern.

Source: European Environment Agency, 2001, Late lessons from early warnings: the precautionary principle 1896-2000, http://www.eea.europa.eu/publications/environmental_issue_report_2001_22

Common Heritage of Mankind requires participatory governance: There is an urgent need for a much wider public debate about the need for deep sea mining, as well as public involvement in how the Common Heritage of Mankind is to be managed, the degree of impacts and benefits society is willing to accept, as well as the distribution (geographically and among people and generations) of benefits and impacts. In general, the developments towards seabed mining have not been widely discussed beyond mining, technical and scientific circles. We therefore want to see all activities towards exploitation paused until the decision to actually execute seabed mining in the Area will have broad support of potentially affected communities and wider civil society. This means that participation of the civil society is required not only in the Authority's regulation processes but also in the decision making whether to conduct the exploitation of mineral resources within the area or not. Only then the ISA can act according to article 140 of the UNCLOS, i.e. for the benefit of mankind as a whole. The [multi-stakeholder conference 'Deep sea mining: Exploring the unknowns'](#) organised by Seas At Risk and the DSCC in April 2016 was a small contribution to opening the debate to a wider audience. The International Seabed Authority should roll out such initiatives globally. As long as such debate has not been held, we cannot see how the ISA can act in the interest of Mankind.

In order to carry out their mandate effectively, the transparency and openness of the ISA, as well as the capacity and impartiality of the LTC, needs to be much enhanced: Within the ISA members and the science community there have been strong concerns regarding the transparency and stakeholder participation within the Authority. These were confirmed among others by the interim report of the periodic review of the International Seabed Authority pursuant to UNCLOS Article 154ⁱⁱ and by the Institute for Advanced Sustainability Studies (IASS) in its policy brief "Towards Transparent Governance of Deep Sea Mining"ⁱⁱⁱ. The same reports also put into question the impartiality of the LTC and its limited capacity - in particular on environment. To overcome some of these problems, we would recommend the creation of an Environmental Committee. Unless the ISA re-dresses these many governance shortcomings, it will be difficult to maintain its credibility as global steward of the ocean commons.

3 Comments and / or suggestions on the working draft

There are many inter-linkages between the draft Regulations and Standard Contract Terms on Exploitation, the upcoming draft Environmental Regulations and the Seabed Mining Directorate Regulations. It is essential that the different regulations are consistent and brought together under an umbrella, cross referencing to each other where needed.

Of course comprehensive and stringent environmental regulations are of utmost importance and should bring together the various environmental risk and impact assessments, measurement, monitoring and mitigation in a coherent package. Transparency, accountability, precautionary principle and polluter pays principle (including an environmental liability insurance and sustainability fund) as regards environmental and social impacts should be the core of this.

As it is, the draft Exploitation Regulations already include some environment-related aspects, and thus risks to preclude some elements that should be in the Environmental Regulations. The regulations regarding access to environmental and commercial data are an example of this. We are concerned that unless the various sets of Regulations are seen as a whole, the current draft Exploitation Regulations may pre-empt decisions on the Environmental ones.

We note that the draft Exploitation Regulations relate to the work of a contracting party only. A higher level comprehensive framework needs to be developed to underpin the processes for planning, Environmental Assessment and Management at regional and global levels, presumably led by the Authority. Possibly this is best incorporated in Environmental Regulations. In addition, there is as well a need to outline the obligations of the Sponsoring State.

We would therefore recommend that the current draft Exploitation Regulations are jointly put to consultation again with the upcoming draft Environmental Regulations and the Seabed Mining Directorate Regulations, should it be decided to keep these all separate.

4 Consents

Seas At Risk gives consent to the ISA to make this submission publicly available.

5 Contact details

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ⁱ Wedding L.M. et al. (2015), Managing mining of the deep seabed, Science July 2015

ⁱⁱ Johnson, D. et al (2016). Periodic Review of the International Seabed Authority pursuant to UNCLOS Article 154 – Interim report. Available at:

https://www.isa.org.jm/files/documents/EN/22Sess/Art154/Art154_InterimRep.pdf

ⁱⁱⁱ Christiansen, S. et al (2016). IASS Policy Brief 2/2016, Towards Transparent Governance of Deep Sea Mining

Available at: http://www.iass-potsdam.de/sites/default/files/files/policy_brief_transparency.pdf



for the protection and restoration of the marine environment

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