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Submission to the consultation on the International Seabed Authority Draft Regulations on Exploitation of Mineral Resources in the Area

To: consultation@isa.org.jm

The following is submitted by [Seas At Risk](#) (SAR), an umbrella organisation of environmental NGOs from across Europe that promotes ambitious policies for marine protection at European and international level.

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We consent to publication of our details.

This is a comment on the draft regulations [ISBA/23/LTC/CRP.3](#) and responds to the Secretariat Note [ISBA/23/C/12](#) of 10 August, 2017.

Abstract

Rather than addressing the questions posed by the Secretariat we believe more fundamental questions need to be addressed first and foremost. We see in particular the need to have a fundamental and democratic reflection about the application of the precautionary principle, the need for deep seabed mining and its long term sustainability implications, the governance flaws within the International Seabed Authority and the process under which the current regulation is being developed. The need for deep seabed mining needs to be furthermore framed in the ongoing discussions about the need for a new global mechanism to more effectively plan resource supply.

It is questionable whether there is any need to commercialise the deep sea. A report by the Institute for Sustainable Futures at the University of Sydney concluded that a 100% transition towards renewable energy by 2050 can take place without having to source metals from the deep sea for renewable technology¹. Recent reports by the European Commission² and the World Bank³ on critical metals do not even mention deep seabed mining as an avenue to explore. Furthermore, there is no evidence that deep seabed mining will reduce our dependency on land based mining – it will merely add another source and thus divest from practices that would lead to much more efficient use of resources.

Like fracking is to oil drilling, deep seabed mining is an unsustainable practice that simply will continue to lock our economies into an unsustainable over-use of non-renewable resources.

¹ Institute for Sustainable Futures at the University of Sydney (2016), [Renewable energy and deep sea mining: supply, demand and scenarios](#)

² European Commission (2017) [Communication on the 2017 list of critical raw materials for the EU](#)

³ World Bank (2017) [“The Growing Role of Minerals and Metals for a Low-Carbon Future”](#)

Applying the precautionary principle = considering more sustainable alternatives

Scientists have urged caution against deep seabed mining in the face of uncertainties about its impact on marine ecosystems. Potential adverse effects on the environment of deep seabed mining are likely to outweigh any potential benefit from increased metal supply. In accordance with the precautionary principle in international law, full-scale commercial extraction of deep sea minerals must therefore be avoided until the long-term pros and cons of deep seabed mining are scientifically scrutinised, and more sustainable avenues explored and democratically deliberated.^{4 5}

With the risk for large scale irreversible and significant environmental harm, deep sea mining imposes a serious threat to sustainability. The scientific warnings are becoming more and more urgent. The MIDAS project⁶ for instance conducted an extensive scientific investigation into the potential consequences of deep seabed mining. Among the greatest concerns: the impact of sediment plumes on species and habitat; the exposure of seabed life to toxic metals released during mining operations; and whether mining will reduce or sever genetic links between different populations of deep-sea animals.

Recently 15 leading deep-sea scientists, legal experts and economists wrote in a letter published in the journal *Nature Geoscience* ‘*Most mining-induced loss of biodiversity in the deep sea is likely to last forever on human timescales, given the very slow natural rates of recovery in affected ecosystems. It is incumbent on the International Seabed Authority to communicate to the public the potentially serious implications of this loss of biodiversity and ask for a response.*’⁷

The Law of the Sea (UNCLOS), which regulates marine activities beyond national jurisdiction, declared the sea floor to be “the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole.” It also mandated “effective protection for the marine environment from harmful effects which may arise from such activities” and the “prevention of damage to the flora and fauna of the marine environment.”

The environmental risks posed by deep sea mining, as well as the fundamental paucity of data on deep-sea marine life and thus an understanding of the functioning of seabed communities and their role in the larger ocean ecosystem, call for a strong application of the precautionary principle, in line with UNCLOS.

The most worrying indication that the ISA is not living up to its mandate to protect the deep sea in a precautionary manner is the recent approval by the ISA of a Polish exploration contract in an area designated under the Convention for Biological Diversity as an Ecologically or Biologically Significant Marine Area. This is in blatant conflict with the precautionary principle (which is at the heart of the CBD and UNCLOS) and other UNCLOS requirements for the protection of the deep sea. Also the fact that the ISA never investigated the actual need for deep seabed mining and available alternatives, and failed to initiate a public debate about this, runs counter the precautionary principle.

The precautionary principle advises to prioritise sustainable alternatives to avoid our economy to

⁴ See, e.g., A.L. Jaeckel, *The International Seabed Authority and the Precautionary Principle*, Brill Nijhoff, Boston, 2017.

⁵ Kim, Rakhyun E. (2017) Should deep seabed mining be allowed? Elsevier, *Marine Policy* 82 (2017) 134–137

⁶ Managing Impacts of Deep-sea resource exploitation <http://www.eu-midas.net/>

⁷ Van Dover C. L. et al (2017) Biodiversity loss from deep-sea mining, *Nature Geoscience*

become locked-into this high risk technology. Alternatives to deep seabed mining are available indeed, and can be found in a transition of economies towards more sustainable models. Fundamental societal transformation should be sought after to cope with the foreseeable shortage of metals and guard them against future exhaustion. There are at several avenues to explore in parallel⁸:

- Improve global resource governance: no international body is currently mandated to plan and oversee the conservation and sustainable use of geologically scarce mineral resources for the long-term future. New links are needed between existing institutional frameworks to oversee responsible sourcing of minerals, trajectories for mineral exploration, environmental practices, and consumer awareness of the effects of consumption. Some limited advisory roles are played by, for example, the International Resource Panel and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development. It might be helpful or even necessary to adopt a new international agreement on mineral resources to decrease the currently unsustainable extraction rates to a sustainable rate.^{9 10} Furthermore, we urge the ISA to take into account relevant multilateral environmental agreements, in particular the forthcoming high seas biodiversity agreement under UNCLOS.
- Make ‘eco-sufficiency’ the new paradigm for the use and supply of metals: till date the materials flow have not been shared equitably between the rich and the poor and between current and future generations¹¹. By opening up yet another source of minerals, deep seabed mining will reinforce unsustainable patterns of production and consumption, divert interest and investment from recycling, reduction and more efficient resource utilisation, and will further exacerbate inequality in both spatial and temporal dimensions. We should stop moving on to new mineral deposits when old ones run out, and shift our paradigm toward dematerialization to “do more with less”.
- Fully implement the 2030 Sustainable Development Goal 12 on sustainable consumption and production to ensure efficient use of minerals through better product design, sharing, re-use, repairing and recycling and development of new materials is key to the solution. Future changes in economic systems, such as the sharing economy (e.g. shared car systems), societal changes and changes in lifestyle also have an as yet little explored potential to enhance resource efficiency significantly, by 2030 and beyond. Every year in the EU, 100 million mobile phones go unused, less than 10% are recycled. This represents an enormous quantity of gold and other precious metals gone to waste. These figures indicate the huge potential of policies to increase resource efficiency world-wide.
- Improve recycling globally, while acknowledging it is only part of the solution. According to the United Nations Environment Programme, globally, metals relevant to deep seabed mining, such as cobalt, copper, gold, iron, lead, manganese, nickel, silver, and zinc, already

⁸ Kim, Rakhyun E. (2017) Should deep seabed mining be allowed? Elsevier, Marine Policy 82 (2017) 134–137

⁹ Time for a global agreement on minerals to fuel the clean energy transition” <https://theconversation.com/time-for-a-global-agreement-on-minerals-to-fuel-the-clean-energy-transition-87186>

¹⁰ Saleem H. Ali et al (2017) Mineral supply for sustainable development requires resource governance, Nature, Vol 547, 13 July 2017

¹¹ R.B. Gordon, M. Bertram, T.E. Graedel, Metal stocks and sustainability, Proc. Natl. Acad. Sci. 103 (2006) 1209–1214.

have relatively high end-of-life recycling rates – the share of end-of-life metal that is recycled – above or close to 50%.¹² However, recycled contents – the fraction of scrap metal in the total metal input of metal production – remain rather low. For example, copper in all old and new, refined or remelted scrap contributes 32% of the United States copper supply¹³. In many cases, the recycling rates of metals are far lower than their potential for reuse. The recycling potential is especially great for rare earth metals, whose current recycling rates and recycled contents are below 1%. Investment can increase efficiencies in the collection and processing of metal-bearing discarded products, and improve recycling technologies.

Till date, however, these avenues have hardly been explored. A comprehensive and informed public debate about the need for deep sea mining has not been held either. It is high time we have this debate in a democratic and participatory way. **We call on the Assembly in 2018 to establish a process to establish a much needed public debate about the need for deep seabed mining, and to ensure that more sustainable alternatives are fully assessed and feed into the debate in an open and transparent manner.**

Better governance including stakeholder and public participation and public access to information

Open and transparent governance is the key to ensuring the protection of the deep sea. The recent review of the functioning of the International Seabed Authority has brought to light various governance flaws, including lack of transparency, lack of environmental capacity and lack in public access to data and information. It indicates that the International Seabed Authority at this point in time does not have an effective governance framework in place nor has the capacity to ensure the protection of the deep sea. The ISA's mandate to protect the deep sea makes it imperative that it does so in an ecosystem based holistic way.

We therefore encourage the International Seabed Authority to act on civil societies' requests for fundamental reforms of the ISA operations, including among others the establishment of an Environment Committee, the opening up of the Legal and Technical Committee for observers, and public access to data and information.¹⁴

Process for development of the exploitation regulations

In light of the ISA's fundamental capacity problems, the process through which the current draft exploitation regulations are being developed, and the currently stated aim of the ISA Secretariat to finalise these by 2020 also calls for concern. We note that the recommendations of the ISA workshop of March 2017, where 100 stakeholders and scientists gathered to provide their input, have been largely ignored. We understand that the draft that is currently under consultation has not been reviewed by the Legal and Technical Committee either. Given this and the governance problems outlined above, the 2020 target date for adopting the exploitation regulations is clearly unrealistic.

¹² <http://www.resourcepanel.org/reports/recycling-rates-metals>

¹³ United States Geological Survey (USGS), Mineral Commodity Summaries 2014, USGS, Reston, 2014.

¹⁴ <http://www.savethehighseas.org/2017/08/18/dscc-calls-international-seabed-authority-transparent-race-explore-deep-sea-accelerates/>

Instead of rushing the development of the exploitation regulation, we call on the ISA Assembly to agree on a longer term process to investigate comprehensively and in a participatory and science-based manner the fundamental questions about the need for deep seabed mining and its long term consequences for the planet and humankind.

It should be reminded that according to UNCLOS, the ISA is not mandated to simply promote deep seabed mining, but more broadly “to organize and control activities in the Area” (Article 157). Disallowing any extractive mining activities should be available as an option. Notably the ISA has power under UNCLOS to disapprove areas of exploitation in cases where substantial evidence indicates the risk of serious harm of the marine environment (Article 162(2)(x)). The protection of the biotic and abiotic environment against unnecessary degradation would make a significant contribution to the betterment of humankind.