

Comments on Working Draft of International Seabed Authority's "Developing a Regulatory Framework for Mineral Exploitation in the Area"
Submission by Earthworks
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Contact: Payal Sampat, Mining Program Director, psampat@earthworksaction.org, +1(202) 887 1872 x. 110, Website: www.earthworksaction.org

Earthworks welcomes the opportunity to comment on this document. Earthworks is a nonprofit organization headquartered in Washington DC, USA. Our mission is to protect communities and the environment from the adverse impacts of extractives development, including mineral development. Earthworks works closely with community organizations, NGOs, scientists concerned about deep-sea mining's potential impacts.

General comments:

The potential impacts of deep-sea mining have not been extensively studied, and are not well understood. Deep-sea mining is a high-risk, experimental industrial activity that is being proposed in some of the most fragile, unexplored areas of our planet. We know far too little about the potential impacts of deep-sea mining on our oceans, marine life and fisheries. DSM would likely place at risk marine organisms that haven't even been discovered as yet, let alone studied. Earthworks recommends that the precautionary principle be applied in decision-making and regulations relating to DSM.

The ISA's working draft acknowledges a need for a separate section on environmental regulation. We support such an addition, which must be developed by independent experts with the necessary research and capacity to develop strong rules. We support the Deep Sea Conservation Coalition's suggestion to create a separate Environmental Committee to this regulatory working group, to increase the capacity to review and manage environmental impact assessments, environmental management plans and other related processes. Such a committee should also commission independent studies on the impacts of seabed mining, which remain largely unknown.

We urge the ISA to set up another public comment period for the draft environmental regulations. In addition, there are a few general principles we believe these regulations must incorporate:

- Consulting impacted communities and civil society stakeholders during environmental impact assessment, and ensuring the implementation of Free, Prior and Informed Consent of affected communities;
- Establishment of no-go zones to protect fisheries, fragile marine ecosystems, and ecosystems that have not been sufficiently studied from DSM's impacts
- Establishment of scientific and citizens' advisory committees to ensure that decisions are informed by independent scientific research and civil society.

In addition, we call on the ISA to hire independent scientists and technical experts -- without any ties or financial connections to industry -- to study the impacts of deep-sea mining as it drafts and refines these regulations.

The draft framework calls for creating a closure plan in accordance with environmental regulations, but doesn't offer too many details. Regulations on closure of projects should have its own section in forthcoming environmental regulations.

We echo the Deep-Sea Mining campaign's concern that the draft Regulations define 'confidential information' and 'environmental information'. They note that "there is a risk that information crucial for assessing the risks, impacts and benefits (and thus conducting costs benefit analysis) could be deemed to be confidential at the discretion of the International Seabed Authority and at the request of a contractor" - and this is a serious concern that we share.

Comments by page number:

Page 20:

"The Commission shall not recommend approval of a proposed Plan of Work if part or all of the area covered by the proposed Plan of Work is included in... An area disapproved for Exploitation by the Council, in cases where substantial evidence indicates the risk of serious harm to the Marine Environment."

This standard establishes a "no-go zone" of sorts, but more details are needed, particularly on what constitutes "serious harm." This section can also mention specific Marine Protected Areas.

Page 41:

Rights of Coastal states

How will coastal communities know when a project is being proposed? Standards for requiring public notice and community consultation should be included in this section.

We also echo the Deep Sea Conservation Coalition's comment here: "Draft regulation 52 has a threshold of "likely to cause serious harm or a threat of serious harm to the marine environment under its jurisdiction or sovereignty". This bar is too high, and if a coastal State "believes" that it "may" cause serious harm or a threat of serious harm to the marine environment under its jurisdiction or sovereignty" the provision should be triggered: i.e. it may notify the Secretary-General."

Page 68:

Section 19: Reporting requirements

The data in these reports should be publicly available.