The International Seabed Authority: Significant Concerns

The International Seabed Authority (ISA) is the international body tasked with making decisions about any mining activities in the “Area”1 - the seabed of the world’s ocean that lies beyond national jurisdiction. Yet the International Seabed Authority’s institutional structure and decision-making processes remain inappropriate for a modern multilateral institution. A thorough review leading to key institutional reforms is necessary to ensure that Member States and all of humankind can have full confidence in International Seabed Authority decisions.

Meanwhile, countries and contractors have been actively exploring the deep ocean for target mine sites. The ISA has granted a deep-sea mining exploration contract for every application it has received and processed, amounting to 30 contracts, covering some 1.5 million square kilometers of seabed. This equates to an area three times the size of Spain (Amon et al, 2022). The ISA is currently working to complete a set of exploitation regulations to allow commercial operations to begin.

Leading scientists continue to raise concerns over the potential environmental impacts of deep-sea mining (Niner et al, 2018; Van Dover et al, 2017; Deep-sea mining science statement, 2023).

A case for institutional reform

Opaque processes and governance

There are deep concerns about the ISA’s lack of transparency. Most decisions made at the ISA are guided by the recommendations of its 41-person Legal and Technical Commission (LTC), an advisory body whose members are elected to serve in their personal capacities for five-year terms. The Council forms the executive and decision-making arm of the ISA. If the LTC issues a recommendation for a plan of work...

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1 The Area refers to the vast expanse of the seabed and ocean floor in areas beyond national jurisdiction. It encompasses approximately 50% of the Earth’s surface and is regulated by the ISA.

2 One application, sponsored by Tuvalu, was withdrawn by Tuvalu in 2022 due to environmental concerns.
(commercial mining), the Council must adopt it, unless disapproved by a two-thirds majority of the Council’s membership, including a majority in all six Chambers. The LTC meets behind closed doors, despite a 2017 request by the ISA Assembly, the “supreme organ”, to hold more open meetings (ISA, 2017).

Under existing rules, contracts approved by the LTC remain confidential. Contractors submit annual reports on their activities to the LTC and the ISA Secretariat, but these are not shared with the ISA membership or the public. While the LTC issues short annual summaries, these provide little record of deliberations or the rationale behind recommendations: even votes taken are not detailed. As a global industry regulator charged with acting for the benefit of humankind as a whole, the ISA’s structure is nowhere near sufficiently transparent. It also lacks clear pathways for soliciting and responding to stakeholder input. In addition to the inherent flaws of the ISA that point to the need for institutional reform, in 2022, concerning reports were published in the New York Times and the Los Angeles Times, which, among other issues, pointed to the unlawful disclosure of data to a mining company.

Observers have recommended that the ISA increase transparency, including by:
- Holding open LTC and Finance Committee meetings with comprehensive reporting;
- Presuming that information is not confidential unless it has otherwise been determined in an open and participatory process;
- Making mining contracts publicly available;
- Publishing annual reports of the contractors’ activities and naming contractors that have failed to comply with their contractual obligations. (Willaert, 2022; Ardron, Ruhl & Jones, 2018).

Monitoring and compliance

The ISA lacks the necessary infrastructure and institutional capabilities to ensure compliance with environmental regulations. Questions remain over whether the ISA could be capable of confronting the technical, financial, and governance challenges of monitoring vast mining operations several thousand meters deep and thousands of kilometers from shore. The LTC has repeatedly reported that several contractors have violated the terms of their contracts under the exploration regulations, although the nature of the violations and the names of the contractors concerned are kept confidential (ISA, 2018).

Recently, scientists aboard a deep-sea mining ship conducting test mining in the Pacific put their jobs on the line in order to leak video footage of the ship releasing brown-black discharge into the ocean (Chiu, 2023). The draft regulations currently being negotiated at the ISA suggest that whistle-blowing incidents be followed up by independent investigations, but no such investigation or punitive action has been taken by the ISA as of March 2023 (Deep Sea Conservation Coalition, 2023). There is no evidence of the ISA taking punitive action for any contract violations that have occurred, as far as the Deep Sea Conservation Coalition (DSCC) is aware.

Lack of a Scientific Committee

Although it is standard practice for scientific committees to advise international organizations, and despite the ISA’s mandated role as an environmental protection agency, it has no dedicated source of scientific or environmental advice to inform its decisions. Instead, environmental issues are the responsibility of the LTC, which is composed largely of geologists, lawyers, and diplomats. ISA Member States have expressed concern that the LTC lacks the expertise to canvass the full range of issues on which it must advise.

For example, the LTC granted a 15-year exploration contract to Poland in the Atlantic Ocean without commenting on the fact that portions of the contract area were recognized under the Convention on Biological Diversity as an Ecologically or Biologically Significant MarineArea. The contract area includes the famous Lost City, “a treasure of the deep sea” and a potential UNESCO World Heritage site (Johnson, 2019). Moreover, in 2022, the LTC hastily approved a test mining permit for The Mining Company’s subsidiary Nauru Ocean Resources Inc. (NORI) under a secretive ‘silence procedure’ process, in spite of the numerous
Areas within the The Clarion-Clipperton Zone under current exploration contracts, reserved for future exploration, and set aside for protection of the marine environment. © Pew Charitable Trusts

Concerns about the application expressed by leading deep-sea scientists (ISA, 2022).

Furthermore, the ISA’s DeepData platform was created to publicly collect and share environmental data from mining companies’ exploratory mining operations in order to increase scientific knowledge and understanding of potential mining areas. However, a recent study found that over a quarter of the records found in the database are duplicates. This high level of duplication is leading to underestimates of species richness found within the deep sea. The study also noted that DeepData contained inconsistent information—for example, records that catalogued two species under the same name (Rabone et al., 2023).

**Potential conflicts of interest**

The ISA is responsible for ensuring the effective protection of the marine environment from the harmful effects of potential mining activities. However, the revenues from issuing mining contracts would fund the organization itself. In 2019, the UK Parliament’s House of Commons Environmental Audit Committee concluded that the ISA therefore has a “clear conflict of interest” (House of Commons Environmental Audit Committee, 2019, p. 33)], a view echoed by the Vatican (Gomes, 2019). States that sponsor mining activities are disproportionately represented on the Council and their nationals comprise a significant portion of the LTC. Many countries that are themselves contractors (through government research agencies or state-owned companies) are members of the ISA Council, allowing them to effectively negotiate rules for themselves. Some LTC members also serve as members of their governments’ delegations in the ISA Council. This means they act as both decision-maker and advisor to the decision-maker. Contractors often attend ISA meetings with the delegations of their sponsoring States and have at times addressed the ISA Council on their sponsoring State’s behalf.

Finally, there have been recent examples where the ISA Secretariat has taken a strong pro-mining position. For example, the Secretary-General of the ISA appeared in a promotional video for The Metals Company, an organization which is actively pressuring the ISA to allow deep-sea mining to begin, in spite of the widespread environmental concerns and gaps in scientific understanding (Seabed mining company promo, 2022).
Incentives to mine

The ISA is designed to prioritize resource extraction, as exemplified in the ‘use-it-or-lose-it’ provisions of Part XI of the United Nations Convention on the Law of the Sea (UNCLOS). These require a contractor either to apply for a commercial mining permit at the end of a 15-year exploration contract or apply for an extension of the exploration contract for a maximum of five additional years. If they do not, they lose their claim altogether and the ISA can give the contract to someone else. A contractor can obtain an extension to an exploration contract if it makes a case that events beyond its control prevented it from completing the exploration work within the 15-year period (ISA, 2013). The use-it-or-lose-it clauses may compel some sponsoring States to apply for mining contracts, even if they are not interested in commercial exploitation.

Two-year loophole

Another weakness of the ISA is that if a sponsoring State asks to apply for an exploitation contract on behalf of a contractor, the ISA must adopt relevant regulations within two years so that the application can go ahead. If the regulations are not ready within two years, the ISA must grant a provisional contract to the contractor to mine, based on any provisional rules in place at the time (United Nations, 1994).

In June 2021, Nauru did exactly this on behalf of its contractor, NORI, a wholly owned subsidiary of The Metals Company (Reid, 2021). This led to a series of meetings and working groups, but no regulations: a clear example of one sponsoring State imposing its own pro-mining agenda on others.

To resolve deeply embedded structural problems, ISA Member States should work towards reforming the ISA so that it becomes a more transparent, accountable, effective and inclusive regulatory body committed to defending the deep, where decisions are informed by the best available science and impartial scientific advice.

References


Recommenations

The DSCC calls on ISA Member States to establish a moratorium on deep-sea mining until the inherent structural issues and flaws, highlighted above, are addressed.

About the DSCC

The Deep Sea Conservation Coalition (DSCC) was founded in 2004 to address the need to prevent damage to deep-sea ecosystems and the depletion of deep-sea species on the high seas from bottom trawling and other forms of deep-sea fishing. The DSCC is made up of over 100 non-governmental organizations (NGOs), fishers organizations and law and policy institutes, all committed to protecting the deep sea.

Further information: info@deep-sea-conservation.org | deep-sea-conservation.org

A manganese nodule taken from the Clarion-Clipperton Fracture Zone. © James St John