



Secretariat
International Seabed Authority
14-20 Port Royal Street
Kingston, Jamaica
(submitted via email to strategicplan@isa.org.jm)

April 12, 2018

RE: DRAFT Strategic Plan (ISBA/23/A/13)

Sir/Madam

Below, please find our Commentary on the Draft Strategic Plan of the International Seabed Authority issued in March this year.

As Group Co-Lead, I submit on behalf of the **Deep-Sea Minerals Working Group of DOSI, the Deep Ocean Stewardship Initiative**. The list of the contributors is presented at the end of the document.

Please note:

- DOSI was granted Observer Status at the 22nd Session of the ISA in 2016.
- DOSI gives Express Consent to the International Seabed Authority to make this submission publicly available.

Please never hesitate to contact us for clarification or further input.

Sincerely,

A handwritten signature in black ink, appearing to be 'V. Tunnicliffe', written in a cursive style.

Verena Tunnicliffe FRSC, PhD
Canada Research Chair in Deep Oceans
University of Victoria, Victoria, BC Canada
verenat@uvic.ca 1 250 721-7135

Comments on
The Draft Strategic Plan of the International Seabed Authority

Background:

In March 2018, the ISA issued a Draft Strategic Plan for 2019-2023, following a request from member states at the 23rd annual session of the International Seabed Authority (ISA) in 2017 to develop a long-term plan defining the strategic direction and aims of the Authority (ISBA/23/A/13). The ISA Secretary General invited comments on the Draft Strategic Plan from member states and stakeholders, and provided a list of general and specific questions to guide comments. The deadline for submissions was 13 April 2018. This paper provides responses by the Deep Ocean Stewardship Initiative (DOSI) to the Secretary General's questions.

General questions

1. Does the Draft Strategic Plan duly encapsulate the mandate and responsibilities set out for the Authority by the Convention and the 1994 Agreement?

The guiding principles for the implementation of the Strategic Plan are transparency and cost-effectiveness (see page 1). While these are important principles, the Plan would arguably better reflect the ISA's mandate if the guiding principles also included the common heritage of mankind (Art. 136, 137, 140 UNCLOS), equity (Art. 140), and the effective protection of the marine environment (Art. 145).

Moreover, the Strategic Plan diverts from the language of the Convention on several points without providing an explanation and justification for such divergence. See, for example, our comments relating to questions 4 and 5 below.

2. Does the structure of the Draft Strategic Plan flow logically?

While the structure is logical, the introduction would benefit from an explanation as to how this Strategic Plan relates to other ISA documents, including regional environmental management plans and project-specific plans of work, but also the ISA's regulations and recommendations.

3. Are the different components ("Mission Statement", "Context & Challenges", "Strategic Directions" and "Results and Priority Outputs") of the Draft Strategic Plan presented in manner that is sufficiently clear, concise and precise?

Four comments can be made here.

First, the Draft Strategic Plan would benefit from more precise and specific wording, clear action items, and a timeline for delivery, to ensure the implementation of that Plan can be

measured. A strategic plan should preferably have defined goals, objectives, and targets against which progress can be assessed. The ‘Results and Priority Outputs’ should reflect SMART language (specific, measurable, achievable, results-oriented, and time-bound). To provide examples, Strategic Direction (SD) 9.1 and 9.2 state that the ISA will ‘[c]ommunicate meaningful information about its work in a timely and cost-effective manner’ and ‘[f]acilitate access to non-confidential information.’ More specific wording would indicate how access will be facilitated and for whom, and what is meant by ‘meaningful information’.

Second, including a specific period to review progress made on the Strategic Plan would provide greater confidence that the Plan’s success will be assessed and publicly communicated.

Third, the Strategic Plan could benefit from a systematic approach to addressing the challenges, strategic priorities, and results and outputs. Certain aspects of environmental protection require other aims to be met first, to enable effective environmental protection. For example, the public availability of baseline data, as per SD 4.5, is a prerequisite for developing monitoring programmes and methodologies (SD 3.4) and for achieving effective environmental protection through tools such as environmental impact assessments and regional environmental management plans. SD 3 notes that the Authority will ‘*progressively develop a cost-effective and technically feasible regulatory framework for the protection of the marine environment*’. It would be beneficial to add more detail about the order and process through which this strategic direction will be achieved as well as an explanation as to how effective protection will be realised.

Fourth, the Strategic Plan contains important steps forward for the Area regime but to ensure these steps will be realised in practice, it seems important that each task is allocated to a responsible organ of the ISA. For example, who will develop monitoring programmes and regional environmental management plans (SD 3.2, 3.4), identify significant gaps in scientific knowledge relating to deep seabed mining (SD 4.2), and analyse world metal market conditions and metal prices (SD 7.1)? Addressing these questions would also contribute to transparent working practices as per SD 9.

Specific questions

4. Does the “Mission Statement” accurately reflect the mandate of the Authority?

Our first concern about the mission statement is the expression of the common heritage of mankind. The mission statement reads:

‘[...] This will be accomplished by developing and maintaining a comprehensive regulatory mechanism for commercial deep seabed mining that incorporates the highest practicable standards of protection of the marine environment and human health and safety and allows for the full participation of developing States consistent with the principle of the common heritage of mankind.’

It is not clear whether the wording ‘*consistent with the principle of the common heritage of mankind*’ relates only to the participation of developing states or also to the protection of the marine environment and human health and safety. If the former is correct, then the statement may be read as reducing the principle of common heritage of mankind to the participation of developing states. While the participation of developing states is no doubt a key aspect of the principle, Article 140 and other articles in Section 2 of Part XI of the

Convention are much broader. In any event, the statement suggests that, contrary to the Convention, the common heritage principle is not a guiding principle for the ISA.

Second, we believe the mission statement should more closely reflect the wording of the Convention and the 1994 Agreement. Specifically, the mission statement includes the wording ‘*highest practicable standards of protection of the marine environment and human health and safety*’. In contrast, the Convention requires the Authority to ‘*ensure effective protection for the marine environment*’ (Art. 145) and ‘*effective protection of human life*’ (Art. 146). The term ‘practicable’ significantly undermines the importance of environmental protection, which the Convention seeks to achieve through both its operative parts as well as its preamble. It also falls short of the obligation of the ISA to ensure effective protection of human life.

In addition, the meaning of the wording ‘highest practicable standard of protection’ is unclear. It could be construed as meaning that practicable protection of the marine environment is only that which allows commercial mining to take place. This begs the question: what if the cost of protecting the marine environment precludes commercialisation of minerals in particular areas? Again, Article 145 of the Convention assigns a far-reaching mandate on the Authority to ensure ‘*effective protection for the marine environment.*’ This wording should be reflected in the mission statement.

Moreover, the term ‘practicable’ stands in contrast to the wording used in the 2011 Advisory Opinion of the Seabed Disputes Chamber in relation to the justification of equal treatment of all states: ‘*uniform application of the highest standards of protection of the marine environment, the safe development of activities in the Area and protection of the common heritage of mankind*’ (para. 159).

Third, the first sentence of the mission statement focuses on the development of mineral resources, but omits the ISA’s mandate to protect the marine environment. The Convention provides for the development of minerals and for the protection of the marine environment from the impacts of mining and tasks the ISA with striking the balance. This balancing act should be reflected in the mission statement.

5. Does the “Context and Challenges” section provide a clear overview of the operational context in which the Authority functions, as well as the constraints it contends with?

The section ‘Context and Challenges’ provides a good overview of the challenges, yet six key points should be made.

First, the section could specifically note the challenge of identifying how the guiding principle of the common heritage of mankind can be given effect in practice. The Draft Strategic Plan references the common heritage principle in relation to capacity building, technology transfers, the participation of developing states, and sustainable development. However, the Plan would benefit from a specific section setting out all dimensions of the common heritage principle, including its links to environmental protection and marine scientific research.

Second, the section omits the implementation of the rules, regulations, and procedures for exploitation. Developing these rules, regulations, and procedures is an important first step but should arguably be complemented by a clear understanding of how they will be implemented in practice. Implementation requires addressing several questions: Which institutional changes will be necessary to be able to fully implement the Mining Code?

Which organ of the ISA will be responsible for which aspects of the implementation? Which tasks should be performed by sponsoring states and other actors? What procedures should be followed for the implementation? This challenge could also be reflected in SD2.

Third, under the heading ‘The need for exploitation regulations’, the following sentence is problematic: *‘The challenge for the Authority is to develop and implement an efficient, cost-effective, administratively sound regulatory path for future mineral exploitation.’* The latter part of the sentence seems to not reflect the full mandate of the Authority as conferred by the Convention and 1994 Agreement. The sentence subordinates both the Authority’s obligation to act on behalf of mankind as a whole and its obligation to ensure effective protection for the marine environment to the aim of creating ‘a path for future mineral exploitation’.

Fourth, it is unclear why the section on ‘Environmental protection’ subjects the need for environmental management to the condition of being commercially viable. The relevant sentence reads:

‘The challenge for the Authority is to adopt an adaptive, practical, technical and commercially viable framework for environmental management, under circumstances of considerable scientific, technical and commercial uncertainty.’

The Convention does not mention commercial viability as requirement for environmental management. Following the wording of the Convention would strengthen this section. Additionally, the following sentence would benefit from naming environmental assessment: *‘The development of regional environmental [assessments and] management plans in particular demands a collaborative and transparent approach to both the collection and sharing of environmental data.’*

Fifth, the last sentence of the section on capacity building and technology transfer could benefit from more clarity.

Lastly, the section on transparency would be strengthened by providing a definition of the term.

6. Are the “Strategic Directions” formulated in a clear and precise manner?

Several of the Strategic Directions represent an important and welcome path for the ISA, including SD 8.2. However, the Strategic Directions could be strengthened by adding the following points:

- SD 3 could include a commitment to establish an external expert scientific advisory group to provide independent review of environmental management at the ISA.
- SD 6 could state the need to clarify the role and responsibilities of sponsoring states.
- SD 7 could refer to the common heritage of mankind and could commit to a public consultation on the meaning of equitable sharing criteria.
- SD 8 could be strengthened further by adding two points:
 - (1) the need to allocate the implementation of particular aspects of the Strategic Plan to a specific actor; and
 - (2) the aim of ensuring that the representation of expertise on the Legal and Technical Commission reflects the Strategic Directions of the Authority.
- SD 9 could be strengthened by including the following:

- (1) the presumption that all information is non-confidential unless otherwise determined, including publication of ‘Plan of Work’ packages, contracts, annual reports submitted by contractors, and annual audited financial statements;
- (2) the need to establish transparent, unbiased, and inclusive mechanisms that determine confidentiality of information;
- (3) the requirement to share scientific data in an electronic format that readily allows for further scientific study, analysis, and review;
- (4) the requirement for ISA Committees to report annually on quality assurance and quality control results for each active contract, as well as compliance with reporting requirements;
- (5) the establishment of a publicly visible process for addressing non-compliance;
- (6) the requirement for Committees to explain in their reporting to Council the rationale behind recommendations, including alternatives that were considered, and any dissenting opinions;
- (7) the establishment of a mechanism to allow for review and appeal of ISA decisions, including requests from third parties, concerning, inter alia, awarding and terms of contracts; approval of plans of work, environmental assessments and closure plans; and
- (8) the requirement to re-consider the next Article 154 review committee structure such that a balance of external experts is included in its membership (consistent with good practices in regional fisheries management organisations).

Annex I provides a table with comments on specific Strategic Directions.

7. Are the “Results and Priority Outputs” appropriate and is there a clear link between the “Strategic Directions” and the “Results and Priority Outputs”?

The priority outputs are very ambitious if they are all to be achieved by 2023. They include inter alia the development of a comprehensive legal framework for exploitation, a benefit-sharing mechanism, monitoring systems, and an increase of the Authority’s institutional capacity. It may be important to note that the central goal is to achieve these aims in a manner that is satisfactory and in line with the Convention, rather than within a particularly short time-frame.

8. Are there any specific observations or comments that Member States and other stakeholders wish to make in connection with any other aspect of the Draft Strategic Plan?

As below:

Annex I: Comments on Specific Strategic Directions

	Text of the Draft Strategic Plan	Comment
SD 1.4	<i>‘Establish and strengthen strategic alliances and partnerships with relevant sub-regional, regional and global organizations to deliver a common and uniform approach, consistent with the Convention and international law, to the sustainable use of ocean resources, including the pooling of resources and funding, particularly in connection with marine scientific research, to avoid duplicating efforts and to benefit from synergies.’</i>	<p>Examples of which organisations are meant here would make this point more specific (e.g. governmental organisations, non-governmental organisations, research institutions, regional fisheries management organisations, the UN’s Decade of Ocean Science, Preparatory Commission for a new instrument on marine biodiversity, etc).</p> <p>Adding the words <i>‘and the protection and preservation of the marine environment...’</i> in addition to <i>‘the sustainable use of ocean resources’</i> would help to balance the focus of this paragraph and clarify that there is indeed a role for regional and global conservation bodies as well (e.g. regional seas organisations and also the Convention on Biological Diversity).</p> <p>Could this SD be linked to the aim of establishing multi-sectoral Areas of Particular Environmental Interest?</p>
SD 2.1	<i>‘Adopt rules, regulations and procedures covering all phases of deep sea mineral exploration and exploitation based on best available information and in line with the policies, objectives, criteria, principles and provisions set out in the Convention and 1994 Agreement.’</i>	<p>It is unclear whether ‘best available information’ refers to scientific, economic, or technical information or all of the above.</p> <p>Given the level of uncertainty involved in deep seabed mining, this SD would be significantly strengthened by specifying minimum requirements for best available information without which no environmental impact assessment is possible.</p> <p>This point could note that the precautionary approach is applicable, especially if uncertainties remain despite the use of best available information.</p>
SD 2.2	<i>‘Ensure that the rules, regulations and procedures governing mineral exploitation incorporate best practices for environmental management and are underpinned by sound commercial principles so as to promote investment on a level playing field.’</i>	<p>Given that deep seabed mining is a new activity for which no best practices have been established yet and scientific knowledge about the impacts of deep seabed mining is in its infancy, it would be beneficial to elaborate on the term ‘best practices’. Will guidance be drawn from a particular, established industry? If so, any guidance needs to be assessed for its potential to meet the standard of ‘effective protection for the marine environment’,</p>

		required by the Convention.
SD 3.1	<i>‘Progressively develop a cost-effective the marine environment from harmful effects which may arise from activities in the Area.’</i>	This point could state: ‘progressively develop, implement, and keep under review a cost-effective and technically feasible regulatory framework for the <i>effective</i> protection of ...’
SD 3.2	<i>‘Develop, implement and keep under review regional environmental management plans for all mineral provinces in the Area where exploration is taking place.’</i>	This point could state ‘...regional environmental <i>assessments and</i> management plans...’
SD 3.3	<i>‘Promote public access to environmental information.’</i>	Stronger wording would be preferable (e.g. <i>ensure</i> or <i>provide</i> public access).
SD 3.4	<i>‘Develop monitoring programmes and methodologies to assess the potential for mining activities to interfere with the ecological balance of the marine environment.’</i>	<p>Recommend to add ‘develop scientifically and statistically robust monitoring programmes ...’ to avoid common problems with monitoring programmes.</p> <p>Also, this point could more closely reflect the language of the Convention, namely that monitoring programmes need to assess the potential for mining to not only ‘<i>interfere with the ecological balance of the marine environment</i>’ but also to cause ‘<i>damage to the flora and fauna of the marine environment</i>’ (Art 145).</p> <p>The monitoring programmes and methodologies will require robust reporting strategies and should be based on baseline data. The assessment of interference with the ecological balance of the marine environment should be grounded in best scientific practice.</p>
SD 3.5	Guiding principles	The guiding principles should include the ecosystem approach, as per draft regulation 17(d) of the Draft Regulation on Exploitation of Mineral Resources in the Area (ISBA/23/LTC/CRP.3).
SD 4.3	<i>‘Strengthen and, as appropriate, establish strategic alliances and partnerships with relevant sub-regional, regional and global organizations, including IOC-UNESCO and IHO, to share data and information, avoid duplicating efforts and to benefit from Synergies.’</i>	This point could make particular reference to the Secretariat and Conference of the Parties of the Convention on Biological Diversity to ensure that future applications for mineral exploration and exploitation fully consider any existing classification of particular sites e.g. as Ecologically or Biologically Significant Areas.

SD 4.5	<i>‘Compile summaries of the status of environmental baseline data and develop a process to assess the environmental implications of activities in the Area (Convention, Art.165(d)).’</i>	These summaries should be made publicly available.
SD 7.1	<i>‘Monitor trends and developments relating to deep seabed mining activities, including analysis of world metal market conditions and metal prices, trends and prospects.’</i>	This information should be made publicly available.
SD 9.1	<i>‘Communicate meaningful information about its work in a timely and cost-effective manner.’</i>	Recommend to add <i>‘...including access to financial reports, audited financial statements, and compliance assessments.’</i>
SD 9.2	<i>‘Facilitate access to non-confidential information.’</i>	Stronger wording would be preferable (e.g. <i>ensure</i> or <i>provide</i> public access).

Primary contributors to this Document (institutional affiliations for information only: all contributors are acting in their personal capacity; opinions are not necessarily those of employers):

Dr Aline Jaeckel, Macquarie University, Australia (Document Lead)
 Dr Diva Amon, Natural History Museum, UK; also Trinidad and Tobago
 Mr Jeff Ardron, University of Southampton, UK
 Ms Amber Cobley, University of Southampton and Natural History Museum, UK
 Dr Ana Colaço, MARE – Marine and Environmental Sciences Centre & Okeanos - Univ. dos Açores,, Portugal
 Mrs Bronwen Currie (personal capacity; formerly, Ministry of Fisheries and Marine Resources), Namibia
 Dr Elva Escobar, Universidad Nacional Autonoma de Mexico, Mexico
 Ms Kristina Gjerde, International Union for Conservation of Nature, Switzerland
 Prof Anna Metaxas, Dalhousie University, Canada
 Dr Marcel Rozemeijer, Wageningen Marine Research, Netherlands
 Prof Verena Tunnicliffe, University of Victoria, Canada
 Prof Cindy Lee Van Dover, Duke University, US