



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

May 31, 2019

RE: DRAFT High Level Action Plan and Report from the Secretary General

Sir/Madam,

Below, please find our Commentary on the **Draft High Level Action Plan and Priorities** and the **Report of the Secretary-General on the Implementation of the Strategic Plan for the International Seabed Authority: Draft Performance Indicators for the 2019-2023 Period** issued earlier this year.

As Group Leads, we 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. Express Consent for sharing is granted.

Please do not hesitate to contact us for clarification or further input.

Sincerely,

A handwritten signature in black ink, appearing to read 'Diva Amon', with a long horizontal flourish extending to the right.

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Comments on the Draft High Level Action Plan and Priorities and the Implementation of the Strategic Plan: Draft Performance Indicators of the ISA for 2019-2023

General Comments

This paper provides comments by the Deep Ocean Stewardship Initiative (DOSI) on the **High-Level Action Plan of the ISA and Priorities for the 2019-2023 Period**, as well as the **Report of the Secretary-General on the Implementation of the Strategic Plan for the International Seabed Authority: Draft Performance Indicators for the 2019-2023 Period**.

DOSI is pleased to see the progress made by the ISA, especially as transparency, cost-effectiveness, the common heritage of mankind, equity, and the effective protection of the marine environment have been included in this Draft High-Level Action Plan. Several of the Strategic Directions, High-Level Actions, and Related Outputs represent an important and welcome path for the ISA.

However, these two documents would benefit from more precise and specific wording and clear actionable processes. These should also include defined goals, objectives, and targets against which progress can be assessed. Additionally, this plan would be strengthened by reflecting SMART language (specific, measurable, achievable, results-oriented, and time-bound). For example, Strategic Direction 9.2 states that the ISA will '[e]nsure access to non-confidential information.' More specific wording would indicate how access will be ensured and for whom beyond promoting and enhancing 'the availability of, and access to, non-confidential information and, in particular, consider wider dissemination of information, analysis and decisions relating to the work of the ISA especially through the ISA database'.

Additionally, the Actions and Outputs are very ambitious; some items are to be finished in 2019 with others achieved through to 2023. They include inter alia the development of a comprehensive legal framework for exploitation, a benefit-sharing mechanism, environmental monitoring systems and management plans, 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. Furthermore, timelines are needed for development of some of the Strategic Directions e.g. 3.2 related to regional environmental assessments and management plans. It should be noted that timelines may not be set by time (a year) but rather along the lines of knowledge. For example, regional environmental management plans (REMPs) can only be fully developed if sufficient environmental baseline data are available. REMPs (ensuring that no serious harm occurs and that effective protection from harmful effects is guaranteed) should be ready before any plans of work for mineral exploitation are considered as this information is essential to inform contractor's objectives and environmental management plans.

While we understand that this is a High-Level Action Plan for the ISA, many of these tasks require input from independent experts. A process for this to occur would be helpful. Some of the tasks that would require a significant level of expert input include:

- Develop guidance for the establishment of impact and preservation reference zones
- Develop a standardized approach for REMPs
- Review the implementation of the CCZ REMP
- Recommend measures to address issues identified in REMPs
- Review the effectiveness of APEIs and designation of additional APEIs
- Draft guidelines for EIAs

- Review EIAs for testing collector components
- Develop Standard and Guidelines for monitoring
- Develop guidelines for MPAs

Comments on Specific Strategic Directions, High-Level Actions, Related Outputs, and Performance Indicators

#	Strategic Direction	Comment
SD 1	Realize the role of the Authority in a global context	<p>In High-Level Action 1.1.1, ‘adjust’ is unclear.</p> <p>In High-Level Action 1.1.2, ‘keep under review’ does not necessarily lead to an action.</p>
SD 1.2	Establish and strengthen strategic alliances and partnerships with relevant subregional, regional and global organizations with a view to more effective cooperation in the conservation and sustainable use of ocean resources, consistent with the United Nations Convention on the Law of the Sea and international law, including the pooling of resources and funding, where appropriate, in particular in connection with marine scientific research, to avoid the duplication of efforts and to benefit from synergies	<p>High-Level Action 1.2.1 could mention specific engagement with the UN Decade of Ocean Science.</p> <p>Consider highlighting the importance of identifying cumulative impacts (from other sectors) relevant to seabed mining through alliances and partnerships with other UN agencies within UN Oceans.</p> <p>Consider adding a High-Level Action: Define mutual interests with organizations the ISA is seeking alliances with.</p> <p>Consider adding a High-Level Action: Establish partnerships with funders to create a marine scientific research fund for adequate and independent environmental studies in the Area. This could include launching a call for sponsors and/or defining contributions from contractors.</p>
SD 1.3	Build a comprehensive and inclusive approach to the development of the common heritage for the benefit of mankind as a whole that balances the three pillars of sustainable development	<p>High-Level Action 1.3.1 should be more specific than stating ‘Ensure that activities in the Area are carried out for the benefit of mankind as a whole’. For example, ‘Create incentives for developing countries to engage’ and ‘Plan logistics for a fund representing humankind or a scientific research fund’.</p> <p>A further High-Level Action to be considered could review whether proposed activities do in fact benefit humankind as a whole, including future generations.</p>
SD 1.5	Strengthen cooperation and coordination with other relevant international organizations and stakeholders in order to promote mutual “reasonable regard” between activities in the Area and other activities in the marine environment and to effectively safeguard the legitimate interests of members of the	<p>Consider adding a High-Level Action: Define legitimate interests of ISA members, contractors, and other users of the marine environment.</p>

<p>Authority and contractors, as well as other users of the marine environment.</p>	
<p>SD 2.1 Adopt rules, regulations and procedures covering all phases of deep sea mineral exploration and exploitation on the basis of best available information and in line with the policies, objectives, criteria, principles and provisions set out in the Convention and the 1994 Agreement.</p>	<p>High-Level Action 2.1.1’s focus on promoting the adoption of regulations runs the risk of compromising the quality of the regulations in order to implement as soon as possible. Suggest rewording ‘adoption’ of rules to ‘development’ of rules.</p> <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 Strategic Direction would be significantly strengthened by specifying minimum requirements for best available information without which no environmental impact assessment is possible. This could note that the precautionary approach is applicable, especially if uncertainties remain despite the use best available information.</p> <p>The description of High-Level Action 2.1.2 (i) could include further detail such as the establishment of a publicly visible process for addressing non-compliance.</p>
<p>SD 2.2 ‘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.’</p>	<p>Given that deep seabed mining is a new activity for which no best practices have been established yet, it would be beneficial to elaborate on the term ‘best practices’. Will guidance be drawn from a particular established industry?</p> <p>Consider adding a High-Level Action: Examine advances in mining technology and scientific information annually to ensure best practices are up to date.</p>
<p>SD 2.3 Ensure that the legal framework for activities in the Area is adaptive and responsive to new technology, information and knowledge and advances in international law relating to the Area, in particular in connection with international law rules on responsibility and liability.</p>	<p>Amend to ‘Ensure that the legal framework for activities in the Area is adaptive and responsive to new technology, new <i>scientific and environmental</i> information and knowledge...’</p>

SD 2.4	Ensure that the regulatory framework gives due consideration to and promotes the participation of developing States in activities in the Area in accordance with the Convention and the 1994 Agreement.	Consider adding a High-Level Action: Create incentives to promote the participation of Developing States.
SDs 2.5, 2.6	<p>Advance the development of the regulatory framework for activities in the Area, taking into account trends and developments relating to deep seabed mining activities, including objective analysis of world metal market conditions and metal prices, trends and prospects, through a predictable process with clear timelines, based on consensus, and that allows for stakeholder input in appropriate ways.</p> <p>Conduct a study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals that are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment, taking into account the work done in this regard by the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (1994 Agreement, annex, sect. 1 (5) (e)), and develop possible criteria for economic assistance.</p>	<p>There are no Performance Indicators listed for these two Strategic Directions, despite their legal requirement under the 1994 Implementing Agreement, sections 1(5)(d)-(e). See also sections 7(1)(b)-(c) regarding economic assistance for those states.</p> <p>These analyses should be made publicly available.</p>
SD 3	Protect the marine environment	<p>The High-Level Action Plan could mention the aim to engage with the scientific community to identify best environmental practices and develop ‘scientifically and statistically robust monitoring programmes’. This is partly covered in the High-Level Actions listed under SD 4.1 and 4.4.</p> <p>Consider adding a Strategic Direction: Identify strategic overarching environmental goals and objectives for the Area to provide guidance for impact assessment, delineation of harmful effects and serious harm.</p>
SD 3.1	Progressively develop, implement and keep under review an adaptive, practical and technically feasible regulatory framework, based on best environmental practices, for the protection of the marine environment from harmful effects which may arise from activities in the Area.	<p>Consider defining and identifying indicators for both ‘effective protection’ and ‘serious harm’. These terms need to be defined based on scientific criteria to ensure that any mining activities are in fact ‘environmentally sustainable’.</p> <p>High-Level Action 3.1.1(ii): ‘Consider’ should be replaced with ‘Develop and implement’. The</p>

	<p>following could also be added to the description: Identify knowledge gaps that limit the quality of the regulatory framework and use the marine scientific research fund (High-Level Action 1.2.5) to tackle identified issues. This could potentially be revised annually by the Council and LTC.</p> <p>High-Level Action 3.1.2(i): ‘Consideration’ should be replaced with ‘Development’.</p> <p>High-Level Action 3.1.3: What happens after review?</p> <p>High-Level Action 3.1.4 requires the review of best environmental practices, even though these have not necessarily been identified yet. An output should be included.</p> <p>Consider adding a High-Level Action: Review new scientific and environmental information relevant to goals, guidelines, etc. This could also be linked to the marine scientific research fund.</p> <p>Performance Indicator 3.1: Add: ‘adopted <i>and implemented</i>’.</p>
<p>SD 3.2 Develop, implement and keep under review regional environmental assessments and management plans for all mineral provinces in the Area where exploration or exploitation is taking place to ensure sufficient protection of the marine environment as required by, inter alia, article 145 and Part XII of the Convention.</p>	<p>High-Level Actions 3.2.1 and 3.2.3(iii): To implement this, Goals, Objectives, and Targets are needed.</p> <p>For High-Level Action 3.2.4, add ‘Encourage, facilitate and develop a financing system enabling independent scientific programs and/or experts’ to support the work of the ISA.</p>
<p>SD 3.3 Ensure public access to environmental information, including environmental information from contractors, and participation by stakeholders, as appropriate.</p>	<p>High-Level Actions 3.3.1 and 3.3.2 depend on the transparency of the ISA, thus procedures should be put in place to ensure that.</p> <p>Specify within High-Level Action 3.3.1 that all environmental information unrelated to direct mineral distribution and content be identified as non-confidential.</p>
<p>SD 3.4 Develop scientifically and statistically robust monitoring programmes and methodologies to assess the potential risk for activities in the Area to interfere with the ecological balance of the marine environment.</p>	<p>High-Level Action 3.4.1 requires indicators, targets, objectives and goals to assess effectiveness.</p> <p>High-Level Action 3.4.2: What happens after review?</p> <p>High-Level Action 3.4.3 & 3.5.4: These could benefit from specific outputs. There are actions that can ensure this, e.g., workshops, meetings, etc., as well as specific stakeholders that can be targeted. Additionally, consider adding</p>

	<p>‘Encourage, facilitate and develop a financing system enabling independent scientific programs and/or experts’ to support the work of the ISA.</p> <p>A specific High-Level Action could be to define ‘ecological balance’ or refer to ISA documents (yet to be created) where it is defined.</p>
<p>SD 3.5 Develop appropriate regulations, procedures, monitoring programmes and methodologies to prevent, reduce and control pollution and other hazards to the marine environment, as well as interference with the ecological balance of the marine environment, prevent damage to the flora and fauna of the marine environment and implement the relevant requirements relating to the protection of the marine environment as contained in Part XII of the Convention.</p>	<p>High-Level Action 3.5.1: Monitoring pollution is not starting until 2022, but monitoring programs are being established this year; why is there a delay in implementation?</p> <p>High-Level Action 3.5.2: Why are there no specific outputs? Also, this requires indicators, targets, objectives and goals to assess effectiveness.</p> <p>High-Level Action 3.5.3: Implementing requirements is not achieved by compiling guidelines. It is achieved by enforcement to follow the requirements, which need to be legally binding to be enforceable.</p> <p>Consider adding a High-Level Action: Identify knowledge gaps and address them using the marine scientific research fund.</p> <p>Consider adding a High-Level Action to define ‘ecological balance’ and ‘damage to flora and fauna of the marine environment’ or refer to ISA documents (yet to be created) where they are defined.</p> <p>Consider adding a High-Level Action requiring the routine comparison of methodologies to determine best practices.</p>
<p>SD 4 Promote and encourage marine scientific research in the Area</p>	<p>We are concerned about the high level of work suggested here. How will this be actioned? Are there adequate resources for these? The ISA could fund independent scientific research that addresses baseline studies and management plans (High-Level Action 1.2.5).</p>
<p>SD 4.1 Continue to promote and encourage the conduct of marine scientific research with respect to activities in the Area, with particular emphasis on research related to the environmental effects of activities in the Area.</p>	<p>Add the following to the description of High-Level Action 4.1.1: Launch an annual call for proposals to address specific knowledge gaps in defined locations in the Area using the marine scientific research fund (High-Level Action 1.2.5).</p> <p>Consider adding a High-Level Action: ‘Create incentives to encourage marine scientific research in the Area’.</p>

<p>SD 4.3</p>	<p>Strengthen and, as appropriate, establish strategic alliances and partnerships with relevant subregional, regional and global organizations, including the Intergovernmental Oceanographic Commission of UNESCO, IAEA and the International Hydrographic Organization and collaborative programmes such as JPI Oceans, to share data and information in an open and transparent manner, avoid the duplication of efforts and benefit from synergies, for example, by aligning with the United Nations Decade of Ocean Science for Sustainable Development, which will address knowledge gaps to be identified by the First Global Integrated Marine Assessment (World Ocean Assessment I).</p>	<p>This Strategic Direction could make particular reference to the ISA 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. Additionally, also additional guidance from World Ocean Assessment I and II when available.</p> <p>High-Level Action 4.3.2: Identify the need to integrate and make compatible the ISA database with existing global databases (OBIS, NODC, World Ocean Atlas, etc.).</p>
<p>SD 4.5</p>	<p>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 (2) (d)).</p>	<p>Recognize changing deep-sea baselines as a result of climate change and other anthropogenic impacts. Coordinate baseline observations with global observing networks to maximize information about changing conditions and biotic responses to help distinguish mining and cumulative impacts and identify changing vulnerabilities.</p> <p>High-Level Action 4.5.1: Add ‘and make them publicly available’.</p>
<p>SD 5</p>	<p>Build capacity for developing States</p>	<p>Consider adding to High-Level Action 5.1.2: Adjust capacity-building programmes as needed to meet the needs of developing States, but also include new scientific knowledge and regulatory knowledge to conduct the effective management for deep-sea environments. This should include fundamental awareness and understanding of deep-sea environments and ecosystems - their biodiversity, functions and services.</p>
<p>SDs 6 and 7</p>	<p>Ensure fully integrated participation by developing States</p> <p>Ensure equitable sharing of financial and other economic benefits</p>	<p>What does ‘ensure fully integrated participation’ entail? More specific actionable items would be useful here.</p>
<p>SD 8</p>	<p>Improve the organizational performance of the Authority.</p>	<p>A Performance Indicator could be to allocate specific tasks under the Action Plan to specific actors within the ISA regime, i.e. ISA organs, member states, or other stakeholders where appropriate.</p>

SD 8.1	Strengthen its institutional capacity and functioning through the allocation of sufficient resources and expertise to deliver its work programmes.	High-Level Action 8.1.3: It is important that the ISA has a balance of experts according to its obligations. Thus, more internal environmental experts are needed. Consider adding a High-Level Action: Develop a plan to create a balance of experts within the ISA according to obligations that the ISA has to fulfil.
SD 9.1	Communicate meaningful information about its work in a timely and cost-effective manner.	Recommend to add ‘...including access to financial reports, audited financial statements, and compliance assessments.’
SD 9.2	Ensure access to non-confidential information.	Clearly define, justify and create criteria for the nature of <i>non-confidential information</i> in order to maximize the distribution of scientific information for the Area.
SD 9.3	Adopt clear, open and cost-effective working practices and procedures and ensure that the chain of responsibility and accountability of all relevant actors is fully understood and properly managed in the development, implementation and enforcement of technical, environmental, operational, scientific and safety regulations and standards for activities in the Area.	This should include: i) The requirement for Committees including the Legal and Technical Commission to explain in their reporting to Council the rationale behind recommendations, including alternatives that were considered, and any dissenting opinions. ii) 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.

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