



Mr Michael Lodge
Secretary-General
International Seabed Authority
Kingston, Jamaica

22 May 2020

Dear Mr Lodge

Re: Government of India Environmental Impact Statement for technical trials concerning a nodule collector pre-prototype in the Central Indian Ocean Basin in 2021

Thank you for the [notification](#) of the extended deadline for submissions on this important environmental impact statement (EIS). The Deep Sea Conservation Coalition (DSCC) has prepared some comments which we have submitted to the Government of India, and which we enclose also for your reference.

In conjunction with this matter, we write to you with concerns about the environmental impact assessment (EIA) process in place at the ISA.

Our central concerns are that:

1. The Commission may not give the EIS a substantive review against environmental protection criteria; and
2. Even where the Commission does identify deficiencies, these may not be communicated to the Council, so the Council will not be able to require amendment to the planned activity, nor to prevent the activity proceeding.

Where, as here, the EIS has deficiencies, these systemic issues are particularly problematic. The current Legal and Technical Committee (LTC) Recommendations¹ provide that:

- (1) The contractor should submit an EIS to the Secretary-General no later than one year in advance of the activity taking place.
- (2) The Secretary-General will check for “completeness against the template;”² and
- (3) The LTC will then review the EIS for ‘completeness, accuracy and statistical reliability’.³

- (4) The next step is that the Commission will provide recommendations to the Secretary-General as to whether the EIS should be incorporated into the programme of activities under the contract.⁴
- (5) If the Commission does not recommend incorporation of the environmental impact statement into the programme of activities under the contract, the contractor has 30 days to provide additional information or, alternatively, opt to resubmit the statement.⁵ If the contractor opts to resubmit the statement, then the statement is to be reviewed in accordance with the process outlined in the Recommendations.⁶

In this process, there is notably no recommendation to Council.

We are also concerned that the review for ‘completeness, accuracy and statistical reliability’ is not a substantive evaluation of compliance with the Recommendations, nor of the impacts identified in that EIS, which is necessary for the ISA to exercise control over activities in the Area⁷ and to ensure the effective protection of the marine environment.⁸

The ISA should undertake a substantive review of any contractor’s EIS, which should include determining, according to Regulation 31(4),⁹ whether proposed exploration activities in the Area would have serious harmful effects on vulnerable marine ecosystems. The ISA must also have a process to ensure that, if it is determined that proposed activities would have serious harmful effects on vulnerable marine ecosystems, those activities are managed to prevent such effects, or are not authorized to proceed, as is required by Regulation 31(4).

Notably, there is no provision for any organ of the ISA, such as the Council, to require specific management or mitigation activities as a condition of proceeding with the activity. Instead, after LTC review “the plan would then be incorporated into the programme of activities under the contract.”¹⁰ The EIS is submitted, and then the proponent would proceed with the activity.

Our reading of the current regime is that, even if a plan for a proposed exploration activity and its associated EIS is inadequate in substance was prepared without due procedure, or otherwise fails to conform with the Recommendations, in practice there is no recourse for the ISA, and particularly the Council, to intervene to prevent the activity proceeding or to otherwise influence it. This appears to fall short of the supervisory and environmentally protective duties required of the ISA by UNCLOS.

DeepData

Finally, we observe that Table 1.2.2.4 in the EIS highlights an issue that all environmental data submitted to the ISA needs to be made accessible to all stakeholders as soon as possible to allow independent analysis and quality control. As such we look forward to improvements to the ISA’s DeepData database, such as:

- Ensuring all data is included and accessible in a useable format,
- Information on collection and analyses is linked to the data so scientists can quality control it, and

- Links are established with other relevant existing databases such as GBIF and WoRMS.

Finally, we also request that the Government of India EIS and comments received on it, including this letter, be placed on the ISA website in the interests of transparency,

Thank you for your kind attention to these important matters.

Yours sincerely



Sian Owen

Coordinator

Copy to: Mr Chapi Mwangi, Chief, Contract Management Unit, cmwango@isa.or.jm

Ms Michelle Walker, Chair, Legal and Technical Commission

The Ministry of Earth Sciences (Government of India)

¹ ISBA/25/LTC/6/REV.1

Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area. 30 March 2020. At <https://www.isa.org.jm/document/isba25ltc6rev1> (“Recommendations”).

² Recommendations para. 41(b).

³ Recommendations para. 41(c), and Annex I, para. 65.

⁴ Recommendations para. 41(h).

⁵ Recommendations para. 41(i).

⁶ Recommendations paragraph 41(i).

⁷ Article 153(1) of the Convention

⁸ Article 145 of the Convention

⁹ Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. ISBA/19/C/17. At <https://www.isa.org.jm/documents/isba19c17>. Regulation 31(4) The Commission shall develop and implement procedures for determining, on the basis of the best available scientific and technical information, including information provided pursuant to regulation 18, whether proposed exploration activities in the Area would have serious harmful effects on vulnerable marine ecosystems and ensure that, if it is determined that certain proposed exploration activities would have serious harmful effects on vulnerable marine ecosystems, those activities are managed to prevent such effects or not authorized to proceed.

¹⁰ Recommendations para. 41(h)