



Deep Sea Conservation Coalition¹ submission to the virtual European sub-regional consultation on the implementation of the United Nations Environment Assembly (UNEA) Resolution 4/19 on Mineral Resources – 10 September 2020

Mineral resource governance

The DSCC welcomes this consultation process and broadly agrees with the findings and recommendations regarding mineral resource governance on page 10 of the discussion paper. Notably, we fully support all efforts proposed toward ensuring social and environmental sustainability and justice within the terrestrial mining supply chains, as an important contributor to delivering on the UN Sustainable Development Goals.

That said, we would like to address our comments to the emerging issue of deep seabed mining which is sometime presented erroneously as the only viable alternative to destructive or exploitative terrestrial mining with respect to meeting the rising demand for metals in the 21st century.

Mineral demand for low carbon technology - challenges and opportunities

The transition to 100% renewable energy is necessary to keep global temperature rise below 1.5 degrees and avert the most disastrous impacts of climate change. Yet renewable energy and electric vehicle production have a fast-growing mineral footprint with mining a leading industrial polluter of air, land and water. To ensure that our clean energy economy is truly clean, just and sustainable, we must urgently develop a shared commitment to responsible mineral sourcing, recycling, substitution and materials efficiency, coupled with a reduction in overall energy and mineral demand. It is critical that we accelerate the transition to clean, renewable energy sources, while ensuring that people and the environment are not put at risk through destructive mining and that the push to open new frontiers of exploitation - such as the deep sea - is fully and transparently questioned and consulted.

Importance of and threats to the ocean from deep-sea mining

Making up 90% of our ocean, the deep sea is our planet's largest living space and has been called its "life support system". According to the 1st World Ocean Assessment, the deep sea is home to the greatest diversity of species and ecosystems on Earth. The majority of deep-sea species are yet to be discovered and may hold the key to our future: recently the test to diagnose COVID-19 was developed using an enzyme found in a hydrothermal vent. The deep sea provides a range of critical environmental goods and services - including long-term carbon sequestration – as well as spiritual and cultural significance for communities around the world.

¹ The Deep Sea Conservation Coalition comprises over 80 non-government organizations, fishers organizations and law and policy institutes working together to protect vulnerable deep-sea ecosystems. We aim to substantially reduce the greatest threats to life in the deep sea and to safeguard the long-term health, integrity and resilience of deep-sea ecosystems.

Environmental conditions in the deep make it highly vulnerable to human disturbance, yet it is already and increasingly facing multiple environmental pressures from destructive fishing practices, pollutants, plastics, and the impacts of climate change. The ocean as a whole is at an extraordinary level of stress. Cumulative impacts will exacerbate current states of the ocean.

Scientists warn that deep seabed mining would cause biodiversity loss, both by destroying seabed life where mining would take place, with little prospect of recovery, and by generating plumes, light, toxins and noise that could impact both benthic and mesopelagic marine life far beyond actual mining sites.

Current governance arrangements for deep-sea mining in international waters

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) established the legal framework for deep-sea mining in the in the “Area” – the half of the world’s ocean that lies beyond national jurisdictions. It created the International Seabed Authority (ISA) as the body through which countries regulate mining activities in international waters. Under Article 145 of UNCLOS, the ISA is entrusted with ensuring the “effective protection” of the marine environment and under Article 150 the ISA must guarantee that any mining activities in the Area are carried out for the “benefit of (hu)mankind as a whole”. Commercial-scale mining in the Area, if it ever becomes a reality, can only be carried out with the ISA’s authorization.

Countries and contractors have been actively exploring the deep ocean for target mine sites. The ISA has thus far granted a deep-sea mining exploration contract for every application it has received, amounting to 30 contracts covering some 1.3 million square kilometers of seabed. The ISA is now working to finalize a set of exploitation-phase regulations so that commercial operations can commence.

Leading scientists continue to raise concerns over the potential environmental impacts of deep-sea mining. Yet the ISA’s institutional structure and decision-making processes remain inadequate to the tasks of an effective regulator. Key reforms must be considered to ensure that ISA member States and all of humankind can have full confidence in ISA decisions, while alternative, non-extractive methods for meeting the world’s energy, communications and mobility needs are prioritized.

International commitments to ocean health and sustainable development

Since the adoption of UNCLOS, there have been many developments in international policy relevant to protecting the marine environment and biodiversity from the impacts of human activities. Key among these are:

- The 1992 United Nations Conference on Environment and Development formulated the precautionary principle which states that: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Principle 15 of the Rio Declaration);
- Also in 1992, the Convention on Biological Diversity (CBD) established the conservation of biological diversity and the sustainable use of its components as objectives of the Convention. (Article 1). In 2018, the 14th Conference of Parties adopted the Ministerial Declaration on Investing in Biodiversity for People and Planet which called for mainstreaming biodiversity considerations in the

energy and mining sectors. It urged parties “to increase their efforts with regard to addressing the potential impacts of deep-seabed mining on marine biodiversity. (Decision 14/10, paragraph 1, COP14);

- The 1995 United Nations Fish Stocks Agreement established obligations for the management of fisheries, including deep-sea fisheries, in international waters. These include obligations to protect biodiversity, apply the precautionary approach and protect habitats of special concern. (Articles 5 & 6);
- The 2002 World Summit on Sustainable Development’s Johannesburg Plan of Implementation called on States to “Maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including in areas within and beyond national jurisdiction”. (Paragraph 32);
- In 2006, United Nations General Assembly Resolution 61/105 called on States to protect vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, from destructive fishing practices, recognizing the immense importance and value of deep sea ecosystems and the biodiversity they contain. (Paragraph 80);
- In 2011, the Seabed Disputes Chamber of the International Tribunal for Law of the Sea, in its Advisory Opinion on seabed mining, described the precautionary approach as “an integral part of the general obligation of due diligence of sponsoring States, which is applicable even outside the scope of the Regulations”. (Paragraph 131);
- In 2012, at the United Nations Conference on Sustainable Development, governments committed to protect and restore the health, productivity and resilience of oceans and marine ecosystems, to maintain their biodiversity and enable their conservation and sustainable use for present and future generations. They further called for “urgent actions that effectively reduce the rate of, halt and reverse the loss of biodiversity”. (The Future We Want, Paragraphs 158 & 198);
- United Nations Sustainable Development Goal (SDG) 14 commits States “to conserve and sustainably use the oceans, seas and marine resources for sustainable development”, with target 14.2 committing States to “by 2020 sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience and take action for their restoration, to achieve healthy and productive oceans”. Further, SDG 12 reflects a commitment “to ensure sustainable consumption and production patterns” and SDG 8 commits States to “endeavour to decouple economic growth from environmental degradation”.

Additionally, the need for a more strategic global approach to mineral resource production, extraction, use and re-use has also been recognized. The Intergovernmental Panel on Climate Change, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services and UNEP’s International Resource Panel are all calling for transformational change in our use of the Earth’s resources to reverse environmentally destructive and wasteful production and consumption patterns.

Call for a moratorium on deep seabed mining

Negotiations at the ISA on the international mining code thus far have focused on feasibility and profitability of this emerging industry, with relatively little consideration as to whether deep seabed mining should, in fact, proceed. The global community now has a vanishingly small window of time in

which to question and scrutinize the underlying assumption that deep seabed mining is going benefit humankind as a whole before commercializing our collective common heritage.²

Therefore, in keeping with the need to live and operate within our planetary boundaries, while providing a safe and just space for all, the precautionary principle, the need for full public participation in environmental decision-making, and the need for inter- and intra-generational equity, the DSCC holds that there should be a moratorium on deep seabed mining; the adoption of seabed mining regulations for exploitation; and the issuing of exploitation and new exploration contracts, unless and until:

1. The environmental, social and economic risks are comprehensively understood;
2. It can be clearly demonstrated that deep seabed mining can be managed in such a way that ensures the effective protection of the marine environment and prevents loss of biodiversity;
3. Where relevant, there is a framework in place to respect the free, prior, informed consent of Indigenous peoples and to ensure consent from potentially affected communities;
4. Alternative sources for the responsible production and use of the metals also found in the deep sea have been fully explored and applied, such as reduction of demand for primary metals, a transformation to a resource efficient, closed-loop materials circular economy, and responsible terrestrial mining practices;
5. Public consultation mechanisms have been established and there is broad and informed public support for deep seabed mining, and that any deep seabed mining permitted by the ISA fulfils the obligation to ‘benefit (hu)mankind as a whole’ and respects the common heritage of humankind; and
6. Member States reform the structure and functioning of the ISA to ensure a transparent, accountable, inclusive and environmentally responsible decision-making and regulatory process to achieve the above.

Summary

The DSCC supports the challenges that other stakeholders have made around the assumption that new extraction is an essential path to a decarbonized future, and the proposals to substantially shift attention and resources to identifying alternatives. We encourage UNEA to add the ocean to its consideration of Mineral Resource Governance, and to ensure greater coherence with related processes and bodies such as the CBD, ongoing negotiations for a treaty on the governance of biodiversity beyond national jurisdiction (BBNJ), as well as the ISA and others. The discussion on governance of mineral resources should be mainstreamed within the overall discussions around ocean health and policy, including to confirm appropriate roles and responsibilities; governance; global accountability; transparency and awareness.

In light of the many levels of uncertainty around the prospect of deep seabed mining, governments should agree to a moratorium on any exploitation licenses and the adoption of a regulatory framework by the ISA.

We respectfully ask as to whether there are plans to convene an Open Ended Expert Working Group on this matter. This would be an appropriate next step in light of the consequence, complexity and global nature of the issues under consideration.

² Kim, R.E. (2017) *Should deep seabed mining be allowed?* Marine Policy 82 (2017) 134–137.