

# Deep Sea Conservation Coalition Submission on Zero Draft Communications and Stakeholder Engagement Strategy

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These are comments of the Deep Sea Conservation Coalition on the zero draft [Communications and Stakeholder Engagement Strategy](#).

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## Introduction

The Zero Draft falls far short of expectations and is significantly flawed in many respects.

Its communication strategy is largely missing and crucial issues, such as how policy and particularly controversial matters are communicated, whether the ISA Secretary-General and members of the Secretariat should engage in policy debate on public platforms, and how the general public is engaged.

The stakeholder engagement strategy should facilitate open, meaningful and constructive dialogue, including on stakeholder expectations. Instead, this draft lays down restrictive rules and falls far short of international standards for stakeholder engagement. It does not clearly distinguish between different categories of observers and other stakeholders; set out their respective roles, responsibilities, and functions; or set out a pathway for facilitating their engagement.

## Context

The International Seabed Authority (ISA) is required to act for the benefit of humankind as a whole. This is a fundamental principle in Part XI of the Law of the Sea. It is thus essential that the ISA establish a broad, inclusive, comprehensive and transparent approach to engage with all relevant stakeholders on all aspects of the work of the ISA. The [Strategic Plan](#)<sup>1</sup> and [High-Level Action Plan](#)<sup>2</sup> for the ISA for 2019-2023 set parameters for stakeholder participation.

One principal concern we have with the Communications and Stakeholder Engagement Strategy (“Zero Draft”) is its framing: it was intended by the Strategic Plan to be a stakeholder communications and consultation strategy and platform which facilitates open, meaningful and constructive dialogue, including on stakeholder expectations. In our view it currently falls far short of this intention. A brief discussion of the background and context of the Zero Draft may assist.

An “engagement strategy” was first articulated in the High Level Action Plan (HLAP), not in the Strategic Plan. The HLAP is meant to be “supplementing”<sup>3</sup> the Strategic Plan, not changing or modifying it. The “stakeholders’ engagement strategy” in the HLAP is in fact implementing Strategic Direction (SD) 9.4, which calls for the “stakeholder communications and consultation strategy and platform which facilitates open, meaningful and constructive dialogue, including on stakeholder expectations” in the Strategic Plan. So the communications and stakeholder engagement strategy should be a “stakeholder communications and consultation strategy and

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<sup>1</sup> ISBA/24/A/10. Decision of the Assembly of the International Seabed Authority relating to the strategic plan of the Authority for the period 2019–2023. 10 August 2018.

<sup>2</sup> ISBA/25/A/15. Decision of the Assembly of the International Seabed Authority relating to the implementation of the strategic plan for the Authority for the period 2019–2023. 24 July 2019

<sup>3</sup> Strategic Plan, para. 2.

platform” which facilitates open, meaningful and constructive dialogue, including on stakeholder expectations. This draft fulfills neither of those roles. It falls far short of international standards for stakeholder engagement. These are set out below.

## International Standards for Stakeholder Engagement

An engagement strategy with non-governmental organizations (NGOs) and other stakeholders should be consistent with and promote the principles of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: the [Aarhus Convention](#).<sup>4</sup> The Aarhus Convention has been incorporated in the Clarion-Clipperton Zone [Environmental Management Plan](#),<sup>5</sup> which provides that the Authority shall enable public participation in environmental decision-making procedures in accordance with the Convention and its own rules and procedures.

The Aarhus Convention is based on three pillars: access to information; public participation; and access to justice which are provided for under its articles 4 to 9.<sup>6</sup> The Convention is specifically supplemented with respect to international organizations in its [Almaty Guidelines](#).<sup>7</sup> Those guidelines set out the need for clear and transparent set of policies and procedures on access to the environmental information that they hold in order to make access by the public more consistent and reliable (access to information), guidelines for participation of the public concerned which should be as broad as possible (public participation) and measures to facilitate public access to review procedures relating to any application of the rules and standards of each forum regarding access to information and public participation (access to justice).

These principles were reinforced in the Rio+20 outcome document [The Future We Want](#).<sup>8</sup> The outcome document stresses that effective governance at the local, subnational, national, regional and global levels representing the voices and interests of all is critical for advancing sustainable development, and stresses the need to “enhance the participation and effective engagement of civil society and other relevant stakeholders in the relevant international forums and, in this regard, promote transparency and broad public participation and partnerships to implement sustainable development”.<sup>9</sup> They have been incorporated in the

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<sup>4</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed at Aarhus, Denmark, on 25 June 1998, entered into force 30 October 2001. At

<https://live.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

<sup>5</sup> ISBA/17/LTC/7. Environmental management plan for the Clarion-Clipperton Zone. Adopted 26 July 2012. At

<https://www.isa.org.jm/documents/isba17l7c7>.

<sup>6</sup> See the Aarhus Convention Implementation Guide, 2nd Edition. At <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>

<sup>7</sup> At ECE/MP.PP/2005/2/Add.5, Annex: Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums. 20 June 2005. At <https://unece.org/DAM/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf>

<sup>8</sup> A/RES/66/288. The Future We Want Outcome Document - The Future We Want. At

[https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/66/288&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/288&Lang=E).

<sup>9</sup> The Future We Want, para. 76.

SDG goal 16.7 target of to ensure responsive, inclusive, participatory and representative decision-making at all levels.

## Overarching Comments

The International Seabed Authority is required to act for the benefit of humankind as a whole. This is a fundamental principle in Part XI of the Law of the Sea. Thus it is essential that the ISA establish a broad, inclusive, comprehensive and transparent approach to engage with all relevant stakeholders on all aspects of the work of the ISA. This may require a substantial expansion of the approach taken to date, including significant reform of operational practices of the ISA such as requiring far more transparency in the Legal and Technical Commission, and possible reform of the decision-making structure of the ISA to ensure that the way that decisions are made related to whether to begin permitting deep-sea mining and, if so, under what conditions and in which areas, and including transparent hearings, independent scientific evidence and full public participation in decision-making on these matters.

This Zero Draft as whole contains a collection of information, assertions, rules, and vague codes of conduct of uncertain origin. It falls short of being a stakeholder communications and consultation strategy and platform which facilitates open, meaningful and constructive dialogue, including on stakeholder expectations.

The communications part of the strategy is all but missing. There is no discussion, for instance, on the public facing role of the Secretary-General and the Authority in general. How are press releases and tweets generated? What is the public role of the Secretary-General and the secretariat? Is it to promote seabed mining or is it to remain neutral as a public servant with an administrative function? Should the Secretariat be proactive in promoting particular policy choices? Should the Secretary-General and staff be neutral in matters of public debate and policy? Should various points of view be given space on the Authority's website?

The Zero Draft in many places conflates the Authority with the Secretariat.<sup>10</sup> It should be clear at all times who is speaking with the full weight of the Authority, with appropriate approval processes in place.

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<sup>10</sup> In many places the term "Authority" is used when it seems the Secretariat would be a more accurate term: See for instance page 2 ("The Authority pays particular attention to ensuring the active participation of all stakeholders in its work"), page 10 ("The Authority gives also a lot of importance in establishing strategic partnerships and alliances with international and regional organizations with a view of ensuring a consistent approach to the protection and preservation of the marine environment and the sustainable development of ocean resources in line with UNCLOS and the 2030 Agenda."); "the Authority keeps an ongoing dialogue and regularly exchanges information with several intergovernmental organizations that do not have observer status"; Page 16 "The Authority also cooperates regularly with non-governmental organizations that do not have observer status, particularly when implementing activities at the regional and/or national level...The Authority strives to respond to requests received from the general public in a timely manner and to develop dedicated activities to increase awareness and visibility of its mandate and work programme."; Page 22 "Demonstrations or any other assemblies are only permitted with prior approval of the Authority"; Page 23 "The Authority gives particular importance to collect inputs and feedback from all stakeholders when developing key documents." On page 24, the term used is "Secretariat of the Authority". "Secretariat" would suffice.

Nor does the Zero Draft contain the elements of an engagement strategy that one would expect. It does not set out elements implementing international transparency standards, detailed below, nor does it clearly distinguish between different categories of observers and other stakeholders, and set out their respective roles, responsibilities and functions.

## Strategic Plan

The Strategic Plan includes as a guiding principle “(g) To provide public access to environmental information” and “(j) To ensure the transparency of and accountability for results.” It states that for the policy and regulatory framework “[t]he process for developing the framework and its implementation must be transparent and allow for stakeholder input.”<sup>11</sup> It clearly states that transparency is a guiding principle for the Authority and “this includes transparency in the internal administration of the Authority, as well as its internal procedures, the procedures of its various organs and subsidiary bodies and its procedures towards States.”<sup>12</sup>

SD 8.2 is to “Ensure a fuller, more active and more informed participation by members of the Authority and other stakeholders through the adoption of working methods that are focused, targeted and effective and delivered under enhanced conditions of transparency and accountability, leading to a more inclusive approach to decision-making.”<sup>13</sup>

SD 9: ‘Commit to transparency’ reads as follows:

34. The Authority will implement the following strategic directions:

**Strategic direction 9.1.** Communicate information about its work in a timely and cost-effective manner.

**Strategic direction 9.2.** Ensure access to non-confidential information.

**Strategic direction 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.

**Strategic direction 9.4.** Build a stakeholder communications and consultation strategy and platform which facilitates open, meaningful and constructive dialogue, including on stakeholder expectations.

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<sup>11</sup> Strategic Plan, para. 14.

<sup>12</sup> Strategic Plan, para. 25.

<sup>13</sup> Strategic Plan, para. 33.

SD 9.4. is but one component of the broader set of enhanced conditions of transparency and accountability required for an inclusive approach to decision making.

## High Level Action Plan

The HLAP recognizes that SD 8.2 involves participation, and proposes high-level actions encouraging the active participation of members of the Authority and relevant stakeholders, as well as to implement and keep under review working methods and processes of the organs of the Authority. These are important actions, and go much further than communication and stakeholder engagement. They should include active and open stakeholder participation in decision-making, including workshops. Similarly, the HLAP response to SD 9.4 is two pronged: “9.4.1. Promote the adoption of a communications and stakeholders’ engagement strategy” and “9.4.2. Actively engage relevant stakeholders in the work of the Authority, as appropriate.” The Zero Draft aims to achieve the first but not the second.

## Zero Draft

An ISA stakeholder engagement strategy should adopt and implement the transparency principles of the Aarhus Convention, Rio+20 and SDG16. Instead, the Zero Draft includes rules that are restrictive and vague, and details of readily available procedural documents. As an organization concerned with the common heritage of humankind, it is essential that the Authority sets a high standard for access to information, public participation and access to justice. The current Zero Draft does not. It all but ignores access to information and access to review procedures and in many respects restricts rather than provides for public participation.

As such, the Zero Draft does not respond to SD 9 as a whole (*Commit to transparency*) and is far more restrictive than the Strategic Plan, purporting only to respond to SD 9.4 which calls for the development of a “*stakeholder communications and consultation strategy and platform which facilitates open, meaningful and constructive dialogue, including on stakeholder expectations*”. For example, SD 9.2, to ensure access to confidential information, is not responded to. Nor is SD 9.1, to communicate information about its work in a timely and cost-effective manner, in any meaningful way.

Instead, the current draft turns transparency on its head, proposing that its purpose “is to inform and guide the Authority’s stakeholders through a detailed presentation of the rules, mechanisms and practices in place through which they can engage in the work of the Authority.”<sup>14</sup> Rather than opening a dialogue and an inclusive approach, it purports to regulate and restrict stakeholders and does little more than set out selectively chosen rules.

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<sup>14</sup> Zero Draft, page 5

It is also not completely accurate. It cites Article 140(1) in supporting a statement that<sup>15</sup> “[t]he Authority has the exclusive mandate to regulate and manage deep-sea mineral activities for the benefit of humankind”, and that “In the context of the Sustainable Development Goals (SDGs), this means ensuring that deep-seabed mining is undertaken in accordance with UNCLOS and the rules, regulations and procedure of the Authority.” We strongly dispute the interpretation that the ISA’s is mandated to ensure deep-seabed mining is undertaken at all. A more accurate reading of Article 140(1), entitled “Benefit of Mankind”, requires that “activities in the Area shall, as specifically provided for in this Part, be carried out for the benefit of mankind as a whole.” Part XI includes, for example, Article 145, that requires that necessary measures shall be taken in accordance with the Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities.

Secondly, the statement places seabed mining “In the context of the Sustainable Development Goals (SDGs)”. [SDG 12](#) is to ensure sustainable consumption and production patterns. By providing for access to the unsustainable extraction of minerals, seabed mining would work against SDG 12. Further, SDG 14, to conserve and sustainably use the oceans, seas and marine resources, provides as a goal 14.1 to prevent and significantly reduce marine pollution of all kinds. Yet the sediment plumes, noise and light associated with seabed mining will increase marine pollution at various points throughout the water column, and potentially for thousands of kilometers from the mine site, depending on current conditions. Similarly, goal 14.2 is to sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts: seabed mining is likely to cause, rather than avoid, significant adverse impacts. And [SDG 16](#) is to promote just, peaceful and inclusive societies, including transparency in SDG Target 16.7 and to develop effective, accountable and transparent institutions at all levels in SDG Target 16.6.

The assertion that “the Authority is taking the necessary measures to ensure that exploitation will comply with strict environmental requirements including the precautionary approach and other highest environmental standards” could read that the Authority will take the necessary measures, but in these early days of the draft regulations and guidelines and standards, it is going to far to say that it is taking those measures. Our position - and that of a growing number of stakeholders - is that the precautionary principle requires a moratorium on deep seabed mining because of the increasing lack of scientific certainty over deep-sea processes and biodiversity and over technology that will be used and its effects.

The Zero Draft also states that “[i]n accordance with the 1994 Agreement, the setting up and the functioning of the organs and subsidiary bodies of the Authority shall be based on an evolutionary approach”, without observing that consistent calls for a scientific and/or

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<sup>15</sup> Zero Draft, page 6.

environmental committee have not resulted in the evolution of the organs and subsidiary bodies of the Authority.

A number of policy statements are made under the heading “Strategic framework and interlinkages with 2030 Agenda” that including the SDG 14, stating that the contribution of the Authority will be the result of the implementation of the economic, environmental and social mandates given to it by UNCLOS and the 1994 Agreement. If policy elements are to be part of a communications and engagement strategy, then they should be developed after the Authority has invited and encouraged participation by the broader set of stakeholders engaged in Agenda 2030 such as local community, Indigenous, youth and women. The policy issues as set out raise many questions: cannot a moratorium on seabed mining be a more effective contribution to SDG 14 than seabed mining, with its attendant damage to the seafloor and pollution of the ocean? Why focus on SDG 14 and ignore SDGs 12, 16, and SDG Target 15.5 to halt biodiversity loss?

## **Public and Closed Meetings**

The Zero Draft mentions the Legal and Technical Commission (Commission) and states that, as a general rule, meetings of subsidiary organs of the Assembly and the Council (such as the Finance Committee and the Commission) are held in private. But curiously, while it cites the Assembly, Council and Finance Committee Rules of Procedure, it does not cite the Commission Rules of Procedure. Among other things, these provide that the Commission shall take into account the desirability of holding open meetings when issues of general interest to members of the Authority, which do not involve the discussion of confidential information, are being discussed. Nor does the Zero Draft cite the request in 2017 by the Assembly – the “supreme organ” - in [ISBA/23/A/13](#) for “the Commission to hold more open meetings in order to allow for greater transparency in its work.” That has not happened, yet it is one of the essential conditions for an inclusive approach to stakeholder engagement.

## **“Accredited stakeholders”**

The Zero Draft states on page 22 that “all accredited stakeholders must fulfil the following obligations” and lists a number of requirements to take part in Authority meetings. This appears to be an error and is meant to say “observers”, since as correctly noted earlier, stakeholders include many categories including members of the public.

The list of requirements lacks any citations. For example, the statement<sup>16</sup> that “Demonstrations or any other assemblies are only permitted with prior approval of the Authority and in compliance with local police laws. Demonstrations that are held without such approval might result in eviction from the Authority’s compound and lifetime loss of the right

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<sup>16</sup> Zero Draft, pages 22-23.

to enter again” lacks any citation, or specificity. What constitutes a “demonstration or any other assembly”? What are local police laws applicable to ISA premises? Where is the authority for an eviction or lifetime loss of the right to enter again? What are the criteria for such a decision? On the face of it, any type of “assembly”, including in the Assembly, is said may result in eviction and a lifetime ban.

### **(iii) Participation in workshops and events organized by the Authority**

The Zero Draft states that “In the implementation of its mandate, the Authority organizes workshops and events designed to progress discussions on specific issues related to its works”<sup>17</sup> and that “call for nominations can be issued ahead of the workshop for selection of participants and/or experts by the secretariat of the Authority detailing specific selection criteria. In any cases, due consideration is also given to ensure balanced geographical representation and gender balance.” This requirement for expertise is not based in any Authority decision, and runs contrary to the Strategic Plan and HLAP requirements for transparency. There is no reason that observers and other stakeholders should not be able to participate in workshops which have an important role in developing Authority Policy, just as they participate in Council and Assembly meetings. The Authority selection process is without foundation, opaque and contrary to transparency requirements.

The Area is the common heritage of humankind and the world at large has a great and justified interest in the development of the regulations. Workshops should not be closed; invitations should be open; speakers, agendas and reports should be transparently developed; and working groups should be relayed over the internet.

### **G. Records and sound recording of meetings”: 2) Workshops, side events organized by the Authority**

This section lacks citation. The following statements require justification and foundation: “By participating in the workshop, participants are deemed giving their consent for the recording,” and “Recording by individual participants without prior consent of all other participants may incur liability and could have serious legal implications for the Authority and for the participants concerned, and for this reason all participants should note that, as a matter of policy, personal recording by participants is not permitted. Recording of the workshop proceeding by participants is strictly prohibited. No participant may electronically record or broadcast any portion of the workshop. Those who do not comply with the present recording policy may be asked to leave the workshop without prior notice.” What constitutes recording? Is recording not subject to the control of the Chair of the meeting? Which workshops, and which side events, are covered by this rule? Why and by what authority is any recording of workshops prohibited?

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<sup>17</sup> Zero Draft, page 23

### 3) Filming of public meetings

Where is the requirement that “Media organizations must have demonstrable editorial oversight” sourced? What constitutes ‘Formally registered as a media organization in a country recognized by the United Nations General Assembly’?

#### “Stakeholder code of conduct”

Where is this Stakeholder Code of Conduct sourced?<sup>18</sup> The following stated requirement appears to be without foundation:

*“With regards to informal or expert working groups, stakeholder representatives must ensure that they highlight their functions as facilitators/participants of these groups in an appropriate manner that avoids misunderstanding. They are expected to always present their organizational affiliation, and clearly indicate that the respective person represents its constituents to the Authority”*

Does this apply to experts? Contrary to the stated position on workshops (“workshop for selection of participants and/or experts by the secretariat of the Authority detailing specific selection criteria”<sup>19</sup>) the Code of Conduct appears to contemplate stakeholders may be facilitators or participants with an organizational affiliation and constituents. This is appropriate, but is inconsistent with the restrictive selection criteria stated earlier for workshops.

Other aspects of the purported Code of Conduct such as “The name and image of a member/observer or a staff of the Authority without their consent in a way that might prejudice their reputation or the reputation of the Authority” likewise lack foundation. What constitutes (use of) the name and image of an observer, for instance, without their consent that may prejudice their reputation, and why is this part of the Code of Conduct?

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<sup>18</sup> Zero Draft, page 30

<sup>19</sup> Zero Draft, page 24