

Deep Sea Conservation Coalition Briefing on Deep-Sea Mining

Key dates for International Seabed Authority (ISA) member States to be in Kingston, Jamaica

Council 16 March - 31 March 2023

Council 10 July - 21 July 2023

Assembly 24 July - 28 July 2023

Council 30 October - 8 November 2023

In 2023, pivotal decisions will be made regarding a risky and highly speculative potential new extractive industry: **deep-sea mining**.

Science has repeatedly demonstrated that deep-sea mining would cause **significant and irreversible damage** to the rich and unique ecosystems of the deep sea, including the **extinction of species**. Damage could extend beyond direct benthic impacts to [fish and fisheries](#), [marine mammals](#) and the deep sea's [climate regulatory functions](#). Any [financial benefits would accrue to industry players in wealthy countries](#), while the greatest risks would be faced by vulnerable coastal communities.

Furthermore, there is **growing evidence that we do not even need these minerals**. Rapid developments in technology and circular economy sectors offer an [expanding set of alternatives](#) to reduce demand and avoid opening a vast new extractive frontier in one of our planet's last remaining wilderness areas. [Recent reports](#) indicate that we could reduce demand for minerals by a massive 58% if governments make the right decisions today to cut back our usage. Even the most fervent proponents of deep-sea mining admit that rapid technology changes in their target industries [will result in a decline in demand for deep-sea metals](#).

As we approach this critical period of decision-making for the Area – the common heritage of humankind – **it is incumbent upon all member States and observers of the ISA to participate in the upcoming Council and Assembly meetings and raise their voices against the rush to mine the deep sea**. Article 145 of UNCLOS requires that ISA member States ensure the effective protection of the marine environment. This is a critical year for States to be present at the upcoming ISA meetings and demonstrate that the protection of the deep ocean is a global priority.

2023: A pivotal year for deep-sea mining

In 2021, the Pacific Island State of Nauru and the mining company they are sponsoring triggered what is referred to as the 'two-year rule'. This is essentially a legal countdown of two years, after which the ISA is supposed to adopt a mining code by 9 July 2023 and open the gates to this vast new extractive industry, despite the significant scientific gaps and environmental risks. The two-year rule also suggests that even if the ISA does not adopt the mining code, a mining contract could be granted nonetheless and deep-sea mining could proceed essentially unregulated. The Metals Company (TMC) subsidiary, Nauru Ocean Resources Inc (NORI), has confirmed that they will be [submitting an application to mine](#) from the second half of 2023. There is widespread opposition to granting an exploitation contract to NORI under the two-year rule but **governments must take action pre-emptively to safeguard the deep ocean from this imminent threat**.

The DSCC urges governments to:

1. Publicly express their support for a moratorium or precautionary pause on deep-sea mining

In the space of just 6 months last year, 12 States came out in favour of a precautionary pause, moratorium or ban on deep-sea mining: Chile, Costa Rica, Ecuador, Federated States of Micronesia, Fiji, France, Germany, New Zealand, Palau, Panama, Samoa and Spain. **A recent legal opinion by Matrix Chambers requested by Pew Charitable Trusts found that a “moratorium or precautionary pause is not only consistent with UNCLOS but is actually required by it.** It is a core obligation of State Parties to protect and preserve the marine environment; it would be a violation of that obligation to enable the commencement of exploitation of the Area at a time when scientific understanding of the deep sea, the existing regulatory arrangements, and the ISA’s institutional capacity are insufficient to ensure that outcome”¹. If States are to uphold these responsibilities, **Council and Assembly countries alike must demonstrate political will, actively participate in all the upcoming ISA meetings and use their powers within the ISA to establish a moratorium on deep-sea mining and the granting of any mining contracts**, unless and until there is comprehensive scientific understanding of deep-sea ecosystems and the impacts of deep-sea mining and it can be clearly scientifically demonstrated that deep-sea mining will not cause harm to the marine environment.

2. Prevent the granting of mining contracts

Given the vast gaps in scientific knowledge and the certainty of harm to the marine environment from nodule mining, granting a mining contract would be reckless, irresponsible and contrary to international commitments and international law. **States must therefore take pre-emptive action to ensure that their decision-making processes are not subject to inappropriate voting structures weighted in favour of granting mining contracts.** For example, Council could exercise its powers to issue a directive that the Legal and Technical Commission should refrain from making any recommendations on any pending mining applications.

3. Ensure that the mining regulations are not adopted

There is insufficient scientific information for responsible, evidence-based decision-making. If regulations were adopted, the ISA would be able to allow the allocation of mining contracts up to 60 years or longer (30 years contract and multiple 10 year renewals). We are [decades away from even having a sufficient environmental baseline](#) to make informed decisions regarding the impacts of deep-sea mining. The adoption of regulations would give the green light to deep-sea mining and allow all contractors to apply for exploitation contracts, despite the significant environmental risks and vast knowledge gaps about deep-sea biodiversity and climate regulatory functions. Deep-sea mining is not a sustainable solution to the challenges of the 21st century.

Beyond the two-year rule - The special role of the ISA Assembly

Under international law, the 167 member States of the ISA are responsible for protecting and preserving the marine environment for both current and future generations², and will be held accountable for decisions on whether or not to allow mining on behalf of humankind. If the principles of multilateralism and precaution are to be truly implemented by the ISA,

¹ In 2023, Pew Charitable Trusts asked Counsel at the Matrix chambers to provide legal advice on whether a moratorium or precautionary pause position is consistent with States' obligations under UNCLOS, and, if so: on what terms, and on what grounds. This was a key takeaway from that Opinion. The Opinion will be made publicly available online within the next month. In the meantime, please reach out to the DSCC policy team for a copy of the Opinion.

² Article 192 of the United Nations Convention on the Law of the Sea (UNCLOS).

the Council and the Assembly must both take action to safeguard the fragile ecosystems of the deep ocean, as is required by UNCLOS and other international political commitments (e.g. CBD COP15 Global Biodiversity Framework, SDG 14.2 etc).

As the supreme organ of the ISA, **the ISA Assembly has the power to establish general policies³ that prevent deep-sea mining from going ahead** unless and until it can be clearly, scientifically demonstrated that it will not cause harm to the marine environment. ISA Member States can send powerful political signals to the other ISA organs by **taking the floor in Council and Assembly meetings and expressing their concerns and opposition to deep-sea mining commencing.**

Further to establishing general policies, concerned States of the ISA Assembly will want **to ensure that the ISA Strategic Plan changes direction consistent with the calls for precaution with regard to deep-sea mining.** The Strategic Plan is due for review this year. ISA Assembly States also have the capacity to initiate **a review and reform of the ISA under Article 154 of UNCLOS⁴.** This review is to be carried out every five years (due in 2022) and must address the structure and function of the ISA in light of evolving international priorities.

Preventing deep-sea mining is a clear way for States to fulfil their obligations under UNCLOS to protect and preserve the marine environment and to ensure they are not pressured into making hasty decisions with long-lasting, irreversible consequences for the planet and future generations. **Under UNCLOS, there is no automatic obligation for the ISA to award exploitation contracts. But there is a clear obligation in Article 145 to prevent damage to marine flora and fauna and ensure effective protection of the environment from harmful effects of activities in the Area. A suspension of deep-sea mining is achievable and necessary at this critical moment in history.**

For more information please contact the DSCC Policy team:

Sofia Tsenikli, Deep Sea Mining Campaign Lead - sofia@savethehighseas.org

Matthew Gianni, DSCC Co-Founder and Policy Advisor - matthewgianni@gmail.com

Duncan Currie, DSCC Legal and Political Advisor - duncanc@globelaw.com

Emma Wilson, DSCC Policy Officer - emma@savethehighseas.org

³ Article 160 of the United Nations Convention on the Law of the Sea (UNCLOS).

⁴ Article 154 of the United Nations Convention on the Law of the Sea (UNCLOS).