



Deep Sea Mining Campaign submission to the International Seabed Authority on its Draft Regulations and Standard Contract Terms on Exploitation for Mineral Resources in the Area

25 November 2016

About the Deep Sea Mining Campaign

The Deep Sea Mining (DSM) Campaign is an association of NGOs and citizens from Papua New Guinea, the Pacific Islands, Australia, Canada, Europe and the United States concerned about the likely impacts of deep sea mining on marine and coastal ecosystems and communities.

The DSM Campaign is a Project of The Ocean Foundation, a Partner of Mission Blue/Sylvia Earle Alliance and a Member of the Deep Sea Conservation Coalition.

The Deep Sea Mining Campaign gives its consent to the International Seabed Authority to make this submission publicly available.

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Comments on the draft Regulations

The DSM Campaign calls for a ban on all deep sea mining. Our call for a ban is based on the precautionary principle. The precautionary principle requires that “activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature; and where potential adverse effects are not fully understood, the activities should not proceed.”¹

It is our strong view that the exhaustive examination of the potential impacts of deep sea mining on the environment has not occurred, and that the potential effects are not understood. Deep sea mining should therefore not proceed.

Reports by the DSM Campaign² and Professor Richard Steiner³ examining the Environmental Impact Statement of the Nautilus Solwara 1 project in Papua New Guinea herald the widespread and unpredictable harms that may result from deep sea mining. Amongst other factors, the reports highlight the lack of baseline

¹ The United Nations World Charter For Nature (1982)

² <http://www.deepseaminingoutofourdepth.org/wp-content/uploads/Out-Of-Our-Depth-low-res.pdf> and <http://www.deepseaminingoutofourdepth.org/wp-content/uploads/EIS-Review-FINAL-low-res.pdf>

³ <http://www.deepseaminingoutofourdepth.org/wp-content/uploads/Steiner-Independent-review-DSM1.pdf>

scientific data on the biota and fauna of the receiving environment; the lack of research into the movements of mining plumes; and the lack of understanding of the toxicology and the physical impacts of those plumes.

Further, our call for a ban on deep sea mining reflects the views of our partners and many communities from across the Pacific. Opposition to deep sea mining in the Pacific is strong and growing. The Pacific Islands are big ocean states. People from the Pacific are custodians of the world's largest oceans and it is these oceans that connect everyone in the Pacific. The oceans are important sources of food and livelihoods and are of strong cultural and spiritual importance. Deep sea mining threatens this.

DSM Campaign believes we need to look towards alternatives to traditional notions of mining, like urban mining, that produce little to no waste and abides by ecological limits to protect life and nature. Urban mining is the process of reclaiming, recycling and reusing compounds and elements from products, buildings and waste. Urban mining along with better product design offers an alternative to destructive land-based mining and to the emerging deep seabed mining industry. The DSM Campaign calls on policy makers in both governments and multilateral institutions – including the International Seabed Authority – to facilitate the transition to a new circular economy and reduced resource consumption before the planet's resources are depleted.

Nevertheless, we offer the following comments on the draft Regulations.

The draft Regulations should place high importance on the precautionary principle as a key principle on which all decisions about deep sea mining projects are based. The current reference to using a 'precautionary approach' (in regulation 8) is inadequate. For one, it is not clear what a 'precautionary approach' actually is and whether or not it meets the threshold set by the precautionary principle as defined above. Further, the draft Regulations do not place any direct obligation on applicants to demonstrate they have undertaken an exhaustive examination of the potential risks of a deep sea mining project. The Regulations should place obligations on both applicants/contractors and the International Seabed Authority with respect to the precautionary principle. Due to the unprecedented nature of this industry, the Regulations should adopt the strong definition of the 'precautionary principle' contained in the UN World Charter for Nature.

We note that the draft Regulations define 'confidential information' and 'environmental information'. There is a risk that information crucial for assessing the risks, impacts and benefits (and thus conducting costs benefit analysis) could be deemed to be confidential at the discretion of the International Seabed Authority and at the request of a contractor. A commitment to transparency should override concerns for confidentiality. We note that the New Zealand Environment Court recently determined that the Environmental Protection Authority and seabed mining company, Trans Tasman Resources (TTR), must release hundreds of blacked-out documents from TTR's application for a mining consent on the grounds of transparency. The judge in the case concluded that the crucial nature of the sensitive information, combined with the public's right to participate effectively in the consent process, outweighs any trade secret or business prejudice interest of TTR by a considerable margin.⁴

⁴ <http://www.stuff.co.nz/business/86392828/released-mining-documents-pivotal-to-understanding-south-taranaki-submission>

Similarly, the definition of 'environmental information' should be expanded to include all and any information related to the environment, including how deep sea mining could impact on the environment and on human health via marine food chains and direct exposure to pollutants. Such information would therefore not be subject to confidentiality provisions.

In order to ensure there is public confidence in the regulation of deep sea mining, and to ensure the implementation of the precautionary principle, the Regulations should:

1. Allow for stakeholder engagement, including review of and making submissions in relation to individual applications for an exploitation contract (while we note that the proposed Environmental Regulations will include such requirements, these requirements should be mirrored in the Exploitation Regulations)
2. Allow for the establishment of a scientific advisory council and citizens advisory council to ensure that all decisions on deep sea mining are informed by independent scientific advice and the views of civil society

The recommendations made in this submission echo those we made in our submission in May 2015 on the draft framework for the regulation of deep sea mining. That submission highlighted the need to develop best practice deep sea mining decision making underpinned by the implementation of the Precautionary Principle, achieving Free Prior and Informed Consent, and gaining broad civil society support. We are disappointed that these critical elements have been ignored in the draft regulations now produced by the International Seabed Authority. Without them, there are insufficient checks and balances to allow this industry to proceed. There must be a complete ban on deep sea mining.