



RESOLVE



**Workshop on Enhancing Stakeholder Participation and Transparency in the ISA Process
A Side Event at the International Seabed Authority Annual Session**

**Saturday, July 16, 2016
Moon Palace Jamaica Grande
Ocho Rios, Jamaica**

Workshop Report

The International Seabed Authority (ISA or the Authority) is at a pivotal point: a transition from the exploration to exploitation of deep-sea mineral resources of the Area¹ is in sight and the Authority is beginning to develop exploitation regulations. A report containing a [working draft of the Regulations and Standard Contract Terms on Exploitation for Mineral Resources in the Area](#) was released at the 2016 ISA Annual Session. In addition, pursuant to UNCLOS Article 154, a review of the ISA was initiated in 2015-2016. An [interim report](#) documenting findings of the review was released in May 2016 and discussed at the 2016 ISA Annual Session.

These milestones point to a ready opportunity to consider the governance of the ISA, including stakeholder participation and transparency in its decision-making processes. Recognizing this juncture, The Pew Charitable Trusts and RESOLVE, in partnership with the Commonwealth Secretariat, Institute for Advanced Sustainability Studies, and the World Economic Forum's Global Agenda Councils on Oceans and on the Future of Mining and Metals, convened the Workshop on Enhancing Stakeholder Participation and Transparency in the ISA Process, providing the chance for a variety of stakeholders to share and discuss their perspectives regarding stakeholder participation and transparency. Participants included country delegates, council members, Legal and Technical Committee (LTC) members, contractors, members of the secretariat, and observers, among others. A full list of participants is available in [Appendix A](#).

During the workshop, participants heard perspectives on enhancing stakeholder participation and transparency from an industry, scientific, environmental non-governmental organization (ENGO), and governmental panel; learned about findings from research focused on transparency and public participation; and engaged in small group discussions to consider the issues and opportunities for change. Participants engaged in rich discussions, identified concerns and opportunities for change, and frequently cited transparency as a characteristic the ISA must hasten to improve. This report summarizes the key themes of discussion but does not seek to represent a consensus of the participants.

¹ The Area is defined as the seabed and subsoil beyond the limits of national jurisdiction.

Perspectives on Enhancing Stakeholder Participation and Transparency in the ISA Process

Industry Perspective – Renee Grogan, Sustainability Manager, Nautilus Minerals (and its subsidiary, Tonga Offshore Mining Limited)

Renee highlighted several successful aspects of transparency in stakeholder engagement from the industry perspective. She noted the importance of setting appropriate stakeholder and industry expectations with a transparent structure for engagement; conducting an independent, external review of key proponent documents (such as the EIS) and sharing the findings of the reviewers publicly ; making information publicly available; and creating a level playing field for contractors, whereby all actors have the same requirements for publishing information.

Communicating with stakeholders is an important component of transparency. For example, stakeholders must understand at which points of a process they can provide input. In addition, it is valuable to share data and information publicly, however, it could be necessary to communicate technical information in different formats for audiences with different levels of technical backgrounds.

Looking ahead at transparency and participation in the ISA in the future, Renee expressed an interest in seeing a structured transparency process with clear guidelines and rules that clearly define the points when opportunities for feedback exist. In addition to the formal opportunities for feedback, informal engagement processes are also important and should be encouraged.

Scientific Perspective – Daniel Jones, Deep-Ocean Stewardship Initiative (DOSI)

Daniel spoke on behalf of DOSI, a network of nearly 1000 scientists working on the deep-sea and developing strategies to maintain deep-sea ecosystems. One of the goals of DOSI is to provide information to support ISA decisions. Daniel noted that scientists rely on transparency of data, methods, analysis, and results, which through the scientific process, allows for the dissemination of information and data, the scrutiny of methodologies and results, and the reproducibility of research. In this way, transparency is essential for the scientific process.

Transparency is important to increasing the scientific understanding of the deep-sea in several ways. Sharing data allows scientists to gain a regional perspective. A standardized portal through which data can be shared between parties could be one method to accomplish this. Additionally, scientists are working to understand the impacts of mining, and to do so, they need access to relevant data from activities like test mining and from other industries. During test mining or other activities, data need to be collected and shared. Finally, Daniel suggested there should be clearly defined opportunities for scientists to engage in decision-making processes of the ISA.

Environmental Non-Governmental Organization (ENGO) Perspective – Duncan Currie, Deep Sea Conservation Coalition

Describing ENGO perspectives, Duncan highlighted three pillars of transparency as reflected in the Aarhus Convention: access to information, public participation, and access to justice. In the context of the ISA, some mechanisms and activities already exist under these pillars, however Duncan suggested there is room in the future to go further. Access to information includes activities such as making agendas, reports, and environmental data available. Public participation is the ability to observe the Assembly and Council meetings now, and in the future could be the ability to observe the LTC meetings.

Duncan outlined the aspects of the Interim Article 154 review report concerning transparency with regard to the proposed environmental committee, scientific committee, compliance committee and inspectorate. He indicated the observation that the current governance processes of the Authority are not sufficiently transparent and that many observers and others called for much greater transparency and access to information.

Reflecting on findings in the Interim Article 154 report, Duncan suggested that transparency should exist in all activities and participation should be built into everything that takes place under the ISA. For example, transparency will be an important component of developing a strategic plan. An environmental commission that allows for participation from observers should be developed as mechanisms for implementation and environmental enforcement are employed. In the environmental impact assessment process, stakeholders should be able to access documents, comment on assessments, and understand how their comments will be considered. The same transparency considerations must also be applied to work plans developed consequent on the environmental impact assessments.

Governmental Perspective – Thembile Joyini, Advocate, Counsellor, and Legal Advisory to the Permanent Mission of South Africa to the UN

Reviewing the history of the ISA and the critical juncture for the Authority as it moves towards exploitation, Thembile reminded participants that the ISA is a creation of the 1982 UNCLOS, focused on the *Common Heritage of Mankind* and managing resources for the benefit of humankind as a whole. Given the collective nature of the resources, Thembile suggested it may be useful to consider the Authority as a shared organization, and everyone involved as stakeholders, when thinking about transparency and participation.

The Convention provides an enabling framework that allows for stakeholder participation and transparency, and given the transition, this is an optimal time to discuss it. Thembile highlighted the value of having side events to provide opportunities for stakeholders to work together and constructively develop shared solutions. The Authority was established to monitor deep-sea mining and ensure compliance through the enforcement of mining code; stakeholders should find ways to work together to ensure the Authority can accomplish its tasks.

Stakeholder Participation and Transparency: Other Work

Transparency and Public Participation as Part of Good Governance of Natural Resources – Aline Jaeckel, Institute for Advanced Sustainability Studies (IASS)

Presenting a recently published IASS Policy Brief, Aline described three overarching suggestions for increasing transparency and participation in the ISA: adopt an open information and data policy; ensure the active involvement of all interested stakeholders; and establish an environmental advisory body.

In describing options to adopt an open information and data policy, Aline noted that the U.N. Law of the Sea Convention, Annex III, Article 14(2) says “....Data necessary for the formulation by the Authority of rules, regulations and procedures concerning protection of the marine environment and safety, other than equipment design data, shall not be deemed proprietary.” Nonetheless, there is a lack of available environmental baseline information and data. One option to address this is to presume public accessibility of data and information unless clear criteria are met for it to be held confidential. In

addition, there could be a time limit for the confidentiality of data. Finally, an advisory opinion could help clarify what information should be made available under Article 14(2).

To engage stakeholders, Aline suggested beginning with a stakeholder engagement strategy that defines the type and level of engagement as well as the extent to which stakeholders can participate. Opportunities to engage at an early stage are important, as is possessing the institutional capacity to oversee engagement. Part of stakeholder engagement and institutional capacity could include establishing official channels to communicate scientific research to the ISA organs and to stakeholders more broadly.

The goal of establishing an environmental advisory body is to create a transparent institution that could work in cooperation with the LTC. Importantly, the work of this body would not be confidential and would, thus, allow for full transparency. Also, it could relieve the LTC of some of their work load. The body could take the form of an environmental commission, a panel of experts that considers specific questions, and/or a division within the secretariat that oversees compliance and implements decisions by the Council and Assembly, e.g. regarding regional environmental management plans

The IASS policy brief is titled, “Towards Transparent Governance of Deep Seabed Mining” and is available [online](#).

Assessment of ISA Transparency as Compared to Practices in International fisheries management – Jeff Ardron, Commonwealth Secretariat

Jeff reported on the results of a study to assess the level of transparency and participation under the ISA as compared with that of regional fisheries management organizations (RFMOs). To conduct the comparison, the study authors used a scoring system to review access to information, public participation, and access to outcomes and justice, and compared the range of and mean scores for RFMOs against the ISA score.

Related to access to information, ISA scored weakly on the question of access to scientific data. Specifically, the ISA received a 1 (of 4) on a question assessing whether data are available at a resolution or scale that can be used in independent scientific analysis. The study also assessed access to decision-making and the role of observers. Similar to RFMOs, the ISA does allow observers, however, the ISA scored weakly against the mean RFMO score in the way observers can participate. Jeff identified some practices contributing to the lower score, noting ISA observers are not able to participate on committees. Questions considering the access to justice and outcomes looked at issues such as dispute resolution and publicly available compliance reports. The ISA scored higher than the mean RFMO score for dispute resolution, but lower on the compliance reports question, which are not publicly available.

Overall, ISA scores weaker than all RFMOs in the three categories assessed. Its overall score is 44% as opposed to the 77% mean score for RFMOs. However, Jeff suggested that as the ISA evolves it can change its practices around transparency and participation, learn from the good practices of RFMOs, and thus improve its score. The paper contains nine recommendations for improvement, including the recommendation to develop a comprehensive policy addressing access to information detailing what information is confidential and the processes by which confidential information can be shared over time.

An abstract of the paper is now available from Marine Policy [online](#).

Presentation Discussion Summary

Following each of the presentations, participants discussed ways the foundations of the ISA support transparency and potential operational changes to support participation and transparency. While recognizing some information should be kept confidential, several participants emphasized the need for increased transparency and participation as the Authority moves from the exploration phase to the exploitation phase, and suggested that transparency can allow for and build stakeholder trust in the process and institution.

Considering the United Nations Convention on the Law of the Sea (UNCLOS) that established the Authority, participants considered some foundational principles that could affect how participation and transparency are considered. UNCLOS articles 200 and 244 both speak to making knowledge and information available; one participant suggested these articles could be used to guide decisions about sharing information. In addition, the ISA is dealing with resources that are the common heritage of mankind; some participants suggested that with this foundation in mind, all people on earth can be considered stakeholders or even shareholders.

During the discussion, participants suggested a variety of operational changes to facilitate greater information sharing between organs of the ISA and stakeholders. In some proposals, an additional organ would focus on environmental issues. That organ's meetings would be open to observers. In another suggestion, the Authority would start with the assumption that all information is not confidential, and processes would be put into place to decide if information needs to be kept confidential. Other suggestions included asking observers to follow specific protocols to protect confidential information, providing different levels of detail in information shared with registered observers and the general public, or describing the minority view in reports to the Council. Echoing the emphasis heard in the presentations on setting appropriate expectations for stakeholders, participants recommended clearly defining processes to identify which information is shared or confidential and whether meetings are open or closed, and communicating those processes to stakeholders. To support the verification of appropriate activity, contractors could livestream video of their activity to the Secretariat. Finally, some participants highlighted the link between institutional capacity and transparency, noting an organization must have sufficient capacity and resources to be transparent.

Small Group Discussions on Enhancing Stakeholder Participation and Transparency in the ISA Process

In small groups, participants had the opportunity to engage in deeper conversation around three questions. Each group then reported on their discussions at the plenary level. The questions and key themes of the responses are described below.

Question 1: What data and information, needed for sound decision-making on the exploitation of marine minerals and the protection of marine environment, should be made available to stakeholders outside the ISA? Who needs access to the information and why?

Many groups suggested that environmental impact assessments (EIA) should be made publicly available. In particular, it is important for stakeholders to have access to the environmental data in those documents to support sound decision-making and the protection of the marine environment. In making the full EIA available to stakeholders, environmental data are available while proprietary details, for example, about the machinery used, is protected. Other categories of data suggested for sharing

included: marine genetic resources, gene sequences, safety concerns, and data in transition zones between active and inactive sites.

To support sound decision-making and the protection of the marine environment, some also highlighted the value of sharing scientific data to support further research and suggested potential opportunities for joint data collection to reduce costs. For most stakeholder communities, data can be synthesized, however raw data could be shared with the science community. Recognizing some contractors might wish to keep some data confidential, one group suggested decisions about data sharing between contractors and scientists could occur on a case by case basis. One group highlighted the potential desire to temporarily withhold sharing some data to allow scientists to publish their findings; however, if the data identify some risk to health or safety, or an emergency, it should not be withheld.

Many participants highlighted the need to define how information is made publicly available. For example, in addition to making EIA, scientific, and other information available, many participants highlighted the equal importance of creating predictable processes and mechanisms for sharing information and considering feedback. Related to the EIA, that includes a clear process for sharing the EIA, accepting public comments, and reviewing and responding to public comments.

There were different perspectives expressed around the level of confidentiality provided to different types of information and mechanisms to protect confidentiality. Many agreed that some information is proprietary and should remain private to protect contractor's commercial interests. Several participants also expressed support for a "level playing field" in which all contractors are required to share the same type of information. To help protect the confidentiality of information, registered observers to the process could get access to some detailed information, while general stakeholders outside of the ISA could have access to more high level reports.

Question 2: How can stakeholders be provided with better means of participating in the ISA meetings and decision-making processes?

Participants shared a number of tools to provide stakeholders with better means of participating in the ISA meetings and decision-making processes, including:

- Predictable Processes Help Stakeholders Engage:
 - o Timing for sharing information: If the timing for sharing materials is predictable, stakeholders can know when to expect information for review and plan accordingly.
 - o Predictable comment period and review process: Stakeholders would benefit from a clearly defined comment process for documents, including mechanisms to acknowledge comments are received and determine whether or how comments will be considered. Participants emphasized the importance of setting appropriate expectations for how comments would be considered.
 - o Strategic Plan for Work: If the ISA and LTC have a strategic plan for their work, it offers stakeholders a road map for the process. Understanding the plan for work flow gives stakeholders the opportunity to determine the most valuable time to engage and use resources efficiently.
- Increased Information Accessibility:
 - o Webcast meetings: Live-streaming meetings via the internet could provide increased transparency and public participation, allowing more interested stakeholders to observe meetings without being present. One group suggested this provides an alternative

- observer status, where stakeholders can listen to proceedings but not conduct interventions.
- o Document Titles: Stakeholders may find documents posted online more accessible if links include the document title as well as the reference number.
- Engage member states in the outreach and engagement process: Some participants suggested member states could take on the responsibility of communicating with and engaging key constituencies.

Finally, while no specific mechanisms were suggested, many participants highlighted the need to enable greater participation from civil society stakeholders in developing states.

Question 3: What changes in operation of the LTC, Council, and Assembly would be most helpful in facilitating stakeholder participation and transparency?

During the discussion, a number of operational changes were suggested to facilitate stakeholder participation and transparency. Several participants highlighted the value of developing a set of overarching principles for the Authority to guide the decision-making process, stakeholder participation, and transparency. As one participant noted, the ISA is dealing with resources that are the *common heritage of mankind*, which suggests all humankind are stakeholders. This broad view of ISA stakeholders could inform the overarching principles considered.

Considering potential changes, participants suggested the ISA could provide increased avenues for stakeholder participation across the organization, including opportunities for stakeholders to engage in a strategic planning process for the Authority and to submit items or papers for the Council or Assembly agenda. Many participants highlighted the opportunities to increase stakeholder participation and transparency in the LTC, and suggested pre-planned opening of LTC meetings to observers except when confidential information is discussed.

Other suggestions for operational changes were related to the timing of LTC meetings and to conduct intersessional meetings. If the LTC meeting schedule is adjusted, it could allow for time between the LTC meeting and Annual Session that could provide an opportunity for stakeholders and members to review and consider materials in preparation for the Annual Session. Similarly, intersessional meetings for the LTC could also provide an opportunity for documents to be circulated and reviewed prior to the Annual Session.

Finally, several members highlighted the opportunity to change the meeting location, noting that Jamaica can be difficult to travel to for delegations or stakeholders with limited funds.

Several additional themes around transparency and participation emerged during subsequent discussion. Citing the direct costs and capacity required to share information broadly and the open discussions possible during closed meetings, several participants spoke to the benefits of keeping some information confidential and some meetings closed to observers. Recognizing the concerns expressed about opening LTC meetings to observers, one participant highlighted the need to build trust between parties.

There are a range of other international organizations currently operating with vastly different structures for public participation and transparency; many of these organizations work on similar issues

and successfully engage stakeholders. A review of these other international organizations and the structures and systems they employ to engage stakeholders could help inform a system for the ISA.

Closing and Next Steps

Participants, including the ISA delegates to the Council and Assembly praised the event. Michael Lodge, ISA Deputy to the Secretary-General and Legal Counsel², thanked the broad cross section of stakeholders for attending the day long workshop and for engaging in the rich conversation around participation and transparency in the ISA process. He closed by recognizing the hard work of the LTC to develop the draft exploitation code, noting that transparency is an important component of the draft, and encouraged all stakeholders to comment on the draft.

On behalf of the sponsors and steering committee, Chris Mann with Pew Charitable Trusts, thanked the group for taking time to engage with each other on these important and challenging issues.

² Following the workshop, Michael Lodge was elected, by consensus, Secretary-General of the International Seabed Authority at its 22nd Session in Kingston.

Appendix A: Participant List

| Name | Company |
|----------------------|--|
| Caitlyn Antrim | Rule of Law Committee for the Oceans |
| Jeff Ardron | Commonwealth Secretariat |
| Mohammed Atlassi | Permanent Mission of Morocco |
| Maria Baker | DOSI & INDEEP Lead |
| David Billett | National Oceanography Centre (NOC) |
| Maya Breitburg-Smith | RESOLVE |
| Harald Brekke | Norwegian Petroleum Directorate |
| Wini Broadbelt | Ministry of Infrastructure and the Environment |
| Christopher Brown | ISA |
| Georgy Cherkashov | VNIIOkeangeologia |
| Marta Conde Puigmal | Durham University |
| Duncan Currie | DSCC |
| Hans-Peter Damian | German Environment Agency |
| Paul De Morgan | RESOLVE |
| Kaiser de Souza | African Mineral Development Center |
| Tom De Wachter | Global Sea Mineral Resources NV |
| Phil Dixon | Foreign and Commonwealth Office |
| Georg Eder | Thyssen-Bornemisza Art Contemporary (TBA-21) |
| Meggan Engelke-Ros | NOAA |
| Andrew Friedman | The Pew Charitable Trusts |
| Xiang Gao | Ministry of Foreign Affairs of China |
| Amy Gartner | US Geological Survey USGC |
| Matthew Gianni | Deep Sea Conservation Coalition |
| Kristina Gjerde | IUCN |
| Lowri Mai Griffiths | Foreign and Commonwealth Office |
| Renee Grogan | Tonga Offshore Mining Limited (Nautilus Minerals) |
| Fleur Hamilton | Australian Mission UNNY |
| Robert Heydon | Nauru Ocean Resources Inc. |
| Paul Holthus | World Ocean Council |
| Aline Jaeckel | Institute of Advanced Sustainability Studies; Macquarie University |
| Elie Jarmache | Member of the Legal and Technical Commission of the Seabed Authority |
| Alex Jebson | New Zealand Ministry of Foreign Affairs and Trade |
| Daniel Jones | National Oceanography Centre |
| Thembile Joyini | South Africa |
| Naohisa Kanda | Environmental Management Unit, JAPAN NUS. CO., LTD. |
| John Khoo | Permanent Mission of Singapore |
| John Kurian | National Centre for Antarctic and Ocean Research, Goa |
| Gwenaelle Le Gurun | International Seabed Authority |

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| Tobias Leong | MINISTRY OF FOREIGN AFFAIRS SINGAPORE |
| Linlin Li | Ministry of Foreign Affairs of China |
| Bingzhuo Li | Permanent Mission of China to ISA |
| Jennifer Li | Scripps Institution of Oceanography |
| Michael Lodge | ISA |
| Pedro Madureira | EMEPC |
| Christopher Mann | The Pew Charitable Trusts |
| Duncan Muhumuza-Laki | Uganda Mission |
| Sandor Mulsow | International Seabed Authority |
| Kazuya Naito | JOGMEC |
| Sai Navoti | International Seabed Authority |
| Theophile Ndougisa Mbarga | University of Yaounde |
| Conn Nugent | The Pew Charitable Trusts |
| Greg O'Brien | U.S. Department of State |
| Nobuyuki Okamoto | Japan Oil, Gas and Metals National Corporation |
| Masatsugu Okazaki | Deep Ocean Resources Development Co.,LTD. |
| Takayoshi Ono | Deep Ocean Resources Development Co., Ltd. |
| Aleyda Ortega | Royal IHC |
| Koteswara Rao | Permanent Mission of India to UN |
| Dheny Raw | Department of Foreign Affairs and Trade |
| Christian Reichert | Bundesanstalt fir Geowissenschaften und Rohstoffe |
| Mehdi Remaoun | Permanent Mission of Algeria |
| Marzia Rovere | ISMAR CNR |
| Ralph Spickermann | UK Seabed Resources |
| Paul Taumoepeau | Nautilus Minerals |
| Ye Minn Thein | Minister Counsellor |
| Torsten Thiele | IUCN |
| Helmut Tuerk | Austria |
| Phillip Turner | Duke University |
| Eva Vazquez Gomez | European Commission |
| Jaco van der Hoeven | IHC Mining |
| Kris Van Nijen | Global Sea Mineral Resources |
| Philomene Verlaan | Sargasso Sea Commission |
| Milind Wakdikar | Government of India |
| Simon Walmsley | WWF-International |
| Rong Wang | Ocean Mineral Singapore |
| Jennifer Warren | Lockheed Martin Corporation |
| Philip Weaver | Seascope Consultants |
| Christopher Williams | UKSR |
| Kenneth Wong | Global Affairs Canada |
| Xiangxin Xu | Kiel University |