

## **Mexico´s comments on 2nd Release of LTC´s draft Standards and Guidelines**

General Statement for all the package of Draft Standards and Guidelines.

Mexico presents its compliments to the Legal and Technical Commission (LTC) and recognizes its unmeasured efforts to meet the Council´s request in ISBA/25/C/19/add.1 to work on the standards and guidelines as a matter of priority to support the implementation of the Exploitation Regulations.

This hard work is even more plausible due to the current unusual circumstances arising from the COVID-19 pandemic caused to work on an extraordinary basis. Mexico desires to express its recognition to all LTC members for their strong commitment and the achieved outcomes.

As a member of the Council, Mexico has pointed out the relevance to have a strong legal framework that shall give certainty to the exploitation activities under Part XI of UNCLOS and its 1994 Agreement relating to the implementation of Part XI of UNCLOS. Such legal framework shall include the Regulations, guidelines, standards and other rules that shall constitute the Mining Code which, together with the recommendations of the LTC, shall govern all seabed mining activities in the Area.

To this effect, it is Mexico´s understanding that this framework, as a comprehensive set of rules, shall be read and implemented as a unity; Regulations provide the general rules that shall be developed in detail by the standards and guidelines drafted by the LTC.

Articles 94 and 95 of the Exploitation Regulations provide for the development of Standards and Guidelines following the Regulations themselves. However, such Exploitation Regulations are still in progress to be discussed by the members of the Council and there has been no materialized progress among its members to come into an agreement.

Mexico recognizes the haste to have the legal framework before the commencement of any exploitation activity. Working concurrently among the Regulations and their standards and guidelines serves to accelerate a process that, in other circumstances, will perpetuate a circular deficit that will lead us to an undesirable legal gap. In this regard, we understand that in favor of making the most of time and make progress in the legal scope, the development of such secondary rules is in the best of interests to ensure that the activities in the Area cover all the technical, environmental, financial and administrative requirements as ordered by UNCLOS.

Notwithstanding -and besides the good faith of all ISA members to make that possible-, as far as the Regulations are agreed and/or amended, these standards and guidelines shall be revised and updated accordingly and no the other way

around. From the Mexican perspective, Regulations govern standards, guidelines and recommendations of the LTC.

Mexico calls the other members of the Council over to agree to both; Regulation and Standards & Guidelines, according to the principles as provided in UNCLOS, Part XI, Section 2, jointly with Part XII coherently and integrally.

There are many challenges ahead to be addressed to build a strong and efficient legal framework to achieve the objectives of carried out the activities in the Area with reasonable regard for other activities in the marine environment and to ensure effective protection for the marine environment.

The distinction between Standards and Guidelines in terms of their mandatory nature it's still unclear. It would lead to improper implementation, particularly in such cases whether the provisions are subject to the contractor's criteria. If there is no standardization on procedures, data collection, analysis and processing of information, the objectives of these series of environmental provisions risk being useless.

As an example; baseline information is a keystone for proper environmental management as from the collection of information to further stages of monitoring and implementation of management plans/tools (such as REMPS). Whether the decision as to which data/samples are collected and which are not, how this shall be processed or stored or gathered and how this information has to be reported is left to the Contractor, that will end in a wide variance of information even if such is obtained in the same marine area (e.g. CCZ).

If there is no uniformity in the baseline information, the following steps of assessment and monitoring of impacts and implementation of environmental plans will become problematic and will lack effectiveness.

Finally, Standards and Guidelines must have correlation and consistency among and between them to avoid duplicity of information or processes and to ensure a coherent mechanism that shall be managed by the same entity that will gather it and make it public and accessible and who has to be in charge of implementing them. ISA, as the organization through which States Parties organize and control activities in the Area, shall have these powers so it is desirable that the Authority through its scientific experts body the LTC, has specific competences established in the regulatory framework to assess and assure the control over the activities in accordance to UNCLOS provisions, especially those in articles 145, 192 and 194.



## Draft Guidelines for the establishment of baseline environmental data

### TEMPLATE FOR COMMENTS

| <i>Document reviewed</i>   |   |
|--|---|
| <b>Title of the draft being reviewed:</b>  | Draft Guidelines for the establishment of baseline environmental data |
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| <i>General Comments</i>  |   |
| <p>It is Mexico's understanding that the exploitation legal framework is a comprehensive set of rules that shall be read and implemented as a unity; Regulations provide the general rules that shall be developed in detail by the standards and guidelines; Regulations govern standards, guidelines and recommendations of the LTC.</p> |   |

As far as the Regulations are agreed and/or amended, these provisions shall be revised and updated accordingly and no the other way around.

From Mexican perspective, prior collection of comprehensive baseline data and information should be mandatory, thus these Guidelines for the establishment of baseline environmental data shall be considered as binding requirements for contractors. If there is no uniformity in the baseline information, the following steps of assessment and monitoring of impacts and implementation of environmental plans will become more difficult and will lack effectiveness.

Standards and Guidelines must have correlation and consistency among and between them (Provisions on Baseline environmental data are directly connected with EIA dispositions) to avoid duplicity of information or processes and to ensure a coherent mechanism that shall be managed by the same entity that will gather it and make it public and accessible. ISA, as the organization through which States Parties organize and control activities in the Area, shall have these powers.

***Specific Comments***

| <b>Page</b> | <b>Line</b> | <b>Comment</b>  |
|-------------|-------------|---|
| 4           | 91, 92 & 93 | Scope, coverage and standard of baseline data needed to characterize the physical, chemical, geological as well as sediment properties and biological communities in the Area <b>and the water column around it.</b><br><b>Notes: Information of the water column is essential for the establishment of baseline data. It shall consider the marine area integrally and not only the seabed, ocean floor and subsoil.</b> |
| 5           | 107         | What shall contractors understand by “appropriate representation” to identify changes associated with mining or with natural processes?   |
| 5           | 120-126     | How and who will managed IRZ and PRZ?   |
| 8           | 299-334     | “Data and sampling management”.<br><br>How is previewed that all the information provided in terms of the guidelines are standardized? Which are the mechanisms of transparency and exchange of information between Contractors, GDAC and ISA?  |
| 11          | 330         | “Specific protocols, software, and code that were used should be provided via open access sustained online resources that allow for version control and provide persistent identifiers (e.g., GitHub, Protocols.io)”.<br><br><b>Notes: Protocols, Software and codes can only be provided in open access whether those are restrictions-free in terms of IPL. Associated IPR shall be considered.</b>                     |
| 18          | 625         | Models shall be validated not only for the ocean modelling community but by a broader community of experts in all ocean-related sciences.   |



## Draft Standard and Guidelines for the environmental impact assessment process

| <i>Document reviewed</i>   |  |
|--|--|
| <b>Title of the draft being reviewed:</b>  | <b>Draft Standard and Guidelines for environmental impact assessment process</b> |
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| <i>General Comments</i>  |  |
| <p>It is Mexico's understanding that the exploitation legal framework is a comprehensive set of rules that shall be read and implemented as a unity; Regulations provide the general rules that shall be developed in detail by the standards and guidelines; Regulations govern standards, guidelines and recommendations of the LTC.</p> <p>As far as the Regulations are agreed and/or amended, these provisions shall be revised and updated accordingly and no the other way around.</p> <p>The text does not provide clarity in which of these provisions are Standards and which are Guidelines. As far as Mexico concerns, Standards, Guidelines and Regulations must have</p> |  |

correlation and consistency among and between them. As pointed out, Provisions on Baseline environmental data are directly connected with EIA dispositions. Also there is an integrated relationship between the EIA Standard, the EIA Guideline and the Environmental Impact Statement (EIS), thus it is our understanding that all such provisions are mandatory in nature.

This will provide certainty to contractors and will avoid duplicity of information or processes by ensuring a coherent mechanism that shall be managed by the same entity that will gather and make it public and accessible. ISA, as the organization through which States Parties organize and control activities in the Area, shall have these powers.

Threshold for EIA shall be based in article 206 of UNCLOS. It is desirable that these provisions define what "significant and harmful changes to the marine environmental" shall mean in the context of exploitation activities.

EIA process shall be based in the precautionary principle (not approach) as a response of the several risks that the marine environment, species, resources and human life are exposed from seabed mining activities. This principle requires that environmental impacts are duly assessed prior the commencement of exploitation activities to prevent those significant impacts to happen. No-action shall be considered as an alternative where EIA scoping brings out that irreparable impacts may occur.

Also, EIA procedure shall consider public consultation stages among stakeholders and details of such procedure shall be included in the provisions. Specially, Coastal States shall be consulted in terms of UNGA Resolution 2749(XXV) and article 142 of UNCLOS in observance of rights and legitimate interests of Coastal States. Contractor shall consider the feedback received from the consultation and shall report the results which shall be publicly available.

ISA shall participate proactively in the scoping, decision making and monitoring stages. Even that most of the EIA steps are handled by contractors, regulator participation, through its technical and scientific experts body (LTC), is required to assess and assure the control over the activities and the observance to UNCLOS provisions, particularly those of articles 145, 192 and 194.



## Draft Guidelines for the preparation of an environmental impact statement

### TEMPLATE FOR COMMENTS

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| <b>Title of the draft being reviewed:</b>   | Draft Guidelines for the preparation of an environmental impact statement |
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| <i>General Comments</i>   |   |
| <p>It is Mexico's understanding that the exploitation legal framework is a comprehensive set of rules that shall be read and implemented as a unity; Regulations provide the general rules that shall be developed in detail by the standards and guidelines; Regulations govern standards, guidelines and recommendations of the LTC.</p> <p>As far as the Regulations are agreed and/or amended, these provisions shall be revised and updated accordingly and no the other way around.</p> <p>Standards, Guidelines and Regulations must have correlation and consistency among and between them. As pointed out, there is an integrated relationship between the EIA Standards, the EIA Guidelines and the Environmental Impact Statement (EIS) (EIS is the writing outcome of the EIA procedure), thus it is our understanding that all such provisions are mandatory in nature. This will provide certainty to contractors and will avoid duplicity of information or processes by ensuring a coherent mechanism that shall be managed by the same entity that will gather and make it public and accessible. ISA, as the organization through which States Parties organize and control activities in the Area, shall have these powers.</p> |   |

Public consultation shall consider EIS as well as EIA (Particularly consultation with Coastal States). Contractor shall ponder the feedback received from the consultation and review process and shall report the results providing sufficient evidence on which it based its decision.

All impacts on the marine environment shall be described in the EIS (including cumulative, synergic, etc.) as well as the habitats and ecosystems.

Even tough contractors shall prepare and be responsible for EIS, ISA's participation, through its technical and scientific experts body (LTC), is required to assess and assure the control over the activities and the observance to UNCLOS provisions, particularly those of articles 145, 192 and 194.

***Specific Comments***

| <b>Page</b> | <b>Line</b> | <b>Comment</b>   |
|-------------|-------------|--|
| 13          | 576         | Seabed substrate characteristics shall be linked with geological settings in line 573. Both are considered as interconnected variables.  |
| 14          | 650         | EIS shall describe all kind of impacts and the habitat itself not only it loss or its vulnerability.   |
| 16          | 743         | Public consultation shall be mandatory for EIA process which include the publication of EIS.   |
| 17          | 781         | For identification and registrar purposes, it is desirable that additional information of contractor is listed; such as their nationality and office/institution they are assigned or belong to. |



## Draft Guidelines for the preparation of environmental management and monitoring plans

### TEMPLATE FOR COMMENTS

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|--|---|
| <b>Title of the draft being reviewed:</b>  | Draft Guidelines for the preparation of environmental management and monitoring plans |
| <b>Contact information</b>   |   |
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| <i>General Comments</i>  |   |
| <p>It is Mexico's understanding that the exploitation legal framework is a comprehensive set of rules that shall be read and implemented as a unity; Regulations provide the general rules that shall be developed in detail by the standards and guidelines; Regulations govern standards, guidelines and recommendations of the LTC.</p> <p>As far as the Regulations are agreed and/or amended, these provisions shall be revised and updated accordingly and no the other way around.</p> <p>Standards, Guidelines and Regulations must have correlation and consistency among and between them. As pointed out, there is an integrated relationship between the EIA Standards, the EIA Guidelines, the Environmental Impact Statement (EIS) and EMMP guidelines. Thus it is our understanding that all such provisions are mandatory in nature. This will provide certainty to contractors and will avoid duplicity of information or processes by ensuring a coherent mechanism that shall be managed by the same entity that will gather and make it public and</p> |   |

accessible. ISA, as the organization through which States Parties organize and control activities in the Area, shall have these powers.

EMMP shall consider specific plans for i) management and ii) monitoring of environmental impacts. Those shall include mitigation measures and its effectiveness. It shall be flexible and adaptable to be amended as it is required by recommendation/review of the LTC (Regulation 11), by the comments received according to public consultation (Regulation 11) and/or in light of new science, information and technical developments.

Contractor shall always report the amendments made to EMMP and provide sufficient evidence on which it based its decisions in this regard.

Even tough contractors shall prepare and be responsible for EMMP, ISA’s participation, through its technical and scientific experts body (LTC), is required to assess and assure the control over the activities and the observance to UNCLOS provisions, particularly those of articles 145, 192 and 194. In this regard, all data and information shall be provided to ISA in ordinary basis and not only upon request. Such information as far as it does contravene IPR, shall be publicly available in favour of continuous monitoring, tracking and transparent assessment in accordance of accountability on decision-making principle.

***Specific Comments***

| Page | Line    | Comment  |
|------|---------|--|
| 19   | 592-611 | <p>Consultation process</p> <p>It is important to point out the outcomes of the consultation procedure and how contractors shall consider them in their EMMP. Times shall be clearly established for stakeholders and the contractors to provide additional information and/or modified the EMMP.</p> <p>Whether indigenous/tribal communities are considered in public consultation procedure, 169 IWO Agreement shall apply.</p> |



## Draft Guidelines on tools and techniques for hazard identification and risk assessments

### TEMPLATE FOR COMMENTS

| <i>Document reviewed</i>  |   |
|---|---|
| <b>Title of the draft being reviewed:</b>   | Draft Guidelines on tools and techniques for hazard identification and risk assessments |
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| <i>Specific Comments</i>  |   |

| <b>Page</b> | <b>Line</b> | <b>Comment</b>   |
|-------------|-------------|--|
| 12          | 420         | Assessment of environmental consequences and potential effects on the marine ecosystem shall be considered in and integrated to the EIA and the EIS. |
| 17          | 610         | Monitoring has to be considered in and be integrated to the EMMP.  |
|             |             |  |



## Draft Standard and Guidelines for the safe management and operation of mining vessels and installations

### TEMPLATE FOR COMMENTS

| <i>Document reviewed</i>   |   |   |
|--|---|---|
| <b>Title of the draft being reviewed:</b>  | Draft Standard and Guidelines for the safe management and operation of mining vessels and installations |   |
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| <i>Specific Comments</i>   |   |   |
| Page   | Line  | Comment   |
| 2  | 19  | This should refer to and be integrated with the draft Guidelines on tools and techniques for hazard identification and risk assessments |
| 5  | 128   | d) identify overall emergency preparedness <del>philosophy measures,</del><br><b>procedures and tools</b>                               |
| 9  | 300   | Specific timeline to perform the third audit is required as it is for first and second audits.  |