



Ministerio de Relaciones Exteriores y Culto  
Misión Permanente de Costa Rica ante la Autoridad Internacional de Fondos Marinos

### **Costa Rica's Comments to Standards and Guidelines**

Costa Rica wishes to thank the Legal and Technical Commission for these first drafts of Standards and Guidelines. We also thank the consultants that contributed with the LTC in this endeavour. Our country considers them a good starting point and acknowledges their importance .

Costa Rica also wishes to express the following :

- 1) The Standards and Guidelines will be needed for the implementation of the Regulations. They should be developed according to what is dictated by said regulations. Since the Regulations are far from being agreed, with the March 2019 draft having received hundreds of amendment proposals from Member States and Observers (which have not been incorporated to the document) , the current Standards and Guidelines ( developed based on the very preliminary content of the Regulations)can only be considered themselves preliminary, and shall be reviewed once a final text for the Regulations is agreed.  
In this sense, our comments are also preliminary and Costa Rica reserves its right to further present observations once the final text of the Regulations is agreed.
- 2) Regarding the drafting process, we are aware that the LTC has a very large workload and that experts have been invited to collaborate in the process. In this regard, Costa Rica wishes to express that the sharing of information on the selection process for these experts, as well as the names and affiliation of those selected would benefit transparency. Costa Rica also believes that Member States can be invited to nominate experts. A pool of experts proposed by Member States for future processes would be a good way to promote said transparency.
- 3) Costa Rica wishes to thank the Office for Legal Affairs for extending the deadline for sending the comments. We believe that it would be optimum if enough time is established from the start so that stakeholders can have the time to work on the documents. Some Missions are very small, and contents are very technical, so Costa Rica would be grateful if this can be taken into account when further consultation periods are established. In this regard, we recall the Aarhus Agreement and the Escazú Agreement, as well as the Almaty Guidelines, which require reasonable timeframes to allow stakeholders to prepare and to effectively participate.

- 4) Regarding comments received from Member States and other stakeholders, Costa Rica wishes to take this opportunity to inquire about the actions to be taken in relation to the comments received. We know on certain occasions they have been published in the website, but beyond that, it would be relevant to know the way in which they will be considered, so that the hard work and commitment invested in the review process by Member States and other stakeholders is recognized and fulfills the aim of consultations.

<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>		
-All Standards and Guidelines need to be guided by the Regulations. Since the Regulations are far from being agreed, the drafts open for comments must be considered preliminary and will have to be reviewed once the final draft of the Regulations has been agreed .		
-These guidelines lacks the needed requirements for the establishment of baselines. They only include methodology to acquire the baseline data.		
-Guidelines should include specific standardized minimum requirements on what parameters need to be measured, detailed methodologies to be used(including a minimum number of samples to be collected) and analysis to be carried out, so that data collection, comparison, and synthesis are as efficient as possible.		
-Guidelines are difficult to enforce: definitions of Best Environmental Practices and Best Available Scientific Evidence leaves room to subjectivity		
-Contract areas need mechanism to study non-target areas within EEZ		
-They offer very little detail on modelling, for example, physical oceanography		
-Benthic and pelagic need to be better integrated		
-The establishment of baseline environmental data is crucial. This should be a binding document, it should be Standards for the establishing of Baseline Environmental Data.		
<i>Specific Comments</i>		
Page	Line	Comment
4	65	Since present document focuses on polymetallic nodules, it would not be applicable to other mineral. We suggest present document be renamed as Draft Guidelines for the Establishment of Baseline Environmental Data for Polymetallic Nodules, and further documents be developed for other

		minerals
4	80	Add “Regional Environmental Management Plan” to the list
4	89	Please replace “ good industrial practice” with “ best environmental practice”
4	93	Please replace “area” with “impact zone”. The impact will go beyond soil and subsoil, which is what is understood as “the Area”. The impact on water column must be included.
5	120-124	Please include definition of IRZ s and PRZ s, and their requirements. Also baseline assessment needs to go beyond IRZ and PRZ, so that it can cover adjacent environments that could be impacted.
7	179-184	Please add “midwater sampling”. Please use this language “If the depth of the discharge plume is still to be determined at the time of the baseline studies, all potential release depths should be characterized”
9	251	Sharing of environmental data among contractors should be mandatory, not just recommended. Please amend draft to reflect it as an obligation.
9	268-269	Please describe type of models to provide clarity to contractors
10	296	Standards for sampling and analysis should be provided in a mandatory context. Costa Rica believes this document should be of Standards and not Guidelines , but if this is not decided by the council, certain dispositions that should be mandatory need to be included as such in the regulations.
10	300	Please add details on these “established metadata standards” that should be applied by contractors
11	358	Please include in term values related to measuring effects on midwater fauna that use bioluminescence for its life cycle. Plume in water columns will affect these species.
12	815	An assessment of the water column at all depths is essential as impact will go beyond the release points
41	1604	Please add, for zooplankton analysis, specific data on benthopelagic zooplankton and micronekton living within 100 m from the seafloor.
42	1639	Please include “Biomass”
57	2276	Please include guidance on standardization

<b>Document reviewed</b>		
<b>Title of the draft being reviewed:</b>	Draft Standard and Guidelines for Environmental Impact Assessment Process	
<b>Contact information</b>		
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<b>General Comments</b>		
-All Standards and Guidelines need to be guided by the Regulations. Since the Regulations are far from being agreed, the drafts open for comments must be considered preliminary and will have to be reviewed once the final draft of the Regulations has been agreed .		
-This draft only contains requirements to be addressed descriptively by contractors but lack specific and normative requirements		
-The guidelines suggest rehabilitation, restoration and biodiversity offsets, even though it has been scientifically demonstrated that rehabilitation and restoration are currently impossible (and they might never be possible), and offsets are inappropriate and would lead to a net loss of biodiversity, failing to comply with the effective protection of the marine environment.		
-Costa Rica does not consider appropriate for representatives of the contractors to have participated in the drafting of these documents.		
-Stakeholders consultation should be mandatory at the scoping stage and through the on-going EIS process		
-There should be a provision for a formal review by the LTC/Council		
-The Regional Environmental Management Plan relevant to a Contract Area should be considered in the EIA, specially for developing managing and mitigation measures		
-Because impacts may go well beyond contract /mining area, the term “impact area” should be used		
<b>Specific Comments on Standards</b>		
<b>Page</b>	<b>Line</b>	<b>Comment</b>
1	30	Please add: -Standard establishing environmental objectives, indicators and thresholds -Standard for stakeholders’ consultations
1	38	In relation to the compliance of relevant REMP, the phrasing should be : “apply” , and not just “read” .

1	40-49	Please rename. These are not principles, but objectives. Please add as other objectives of the Standards :“to comply with ISA’s strategic environmental goals and objectives”. In #1, after “protect” add “and preserve”, to reflect art 145 language.
1	43	Please add environmental objectives to assess environmental impacts since the EIA should be developed in line with UNCLOS art. 145, with the aim of protecting and preserving the marine environment.
3	87-94	Add “ An EIA shall be presented when any material change to a Plan of Work is proposed or when the area or scope of activities has expanded”. Please include information on who will be responsible for the screening process to determine if the project requires EIS or EIA.
3	95-100	Please include details on how cumulative impacts will be assessed
4	144	The EIA must go beyond “ high risks” and also include “significant risks”, In order to truly comply with the effective protection of the marine environment.
4	150-153	Impacts should be assessed in light of relevant principles, in particular (but not exclusively) against the Common Heritage of Humankind Principle.
5	176	Monitoring of impacts should not be left exclusively to the contractor, but conducted by independent experts. It should not be optional but prescribed by the regulations and standards.
6	243	How would “acceptable levels” be determined and by whom?
6	239	The EIA assessment must include an environmental risk assessment
8,32	299, 319,1109	Significance and harmfulness of the effects should not be determined by the contractors but decided by the Authority by establishing mandatory indicators and thresholds
13-15	Table 1	It should not be the LTC nor the Secretariat the ones responsible for determining, for example, how much harm to the Common Heritage of Humankind will be considered “acceptable”.
21	683	Please add after “regional activities”... “ as well as climate induced changes”
29	979-996	Please specify process to be followed if impacts exceed acceptable thresholds
30	1033	Mitigation theories and hierarchies used for land activities do not apply to seabed activities, since rehabilitation and restoration are yet not possible (and we don’t know if they ever will be ). Neither does offset.
31	1066	Since no rehabilitation or restoration mechanisms exist (at least for now and the foreseeable future) priority should be given to the first 2 steps of the mitigation : avoidance and minimization
34	1171	Please add: “ indirect and cumulative impacts, including climate change”
35	1209- 1212	The extent to which stakeholder comments were taken into account and the rationale for accepting or rejecting said comments must be part of the stakeholders’ consultation process

<b>Document reviewed</b>		
<b>Title of the draft being reviewed:</b>	Draft Guidelines for the Preparation of an Environmental Impact Statement	
<b>Contact information</b>		
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<b>General Comments</b>		
-All Standards and Guidelines need to be guided by the Regulations. Since the Regulations are far from being agreed, the drafts open for comments must be considered preliminary and will have to be reviewed once the final draft of the Regulations has been agreed .		
-The guidelines do not contain specific standards/thresholds		
-A single Standards Document for EIA and EIS should be prepared		
-EIS should have a specific section that clearly outlines whether the proposed mineral exploitation could affect marine protected areas or special conservation areas designated by any competent organization, inter alia VMEs, EBSAs, PSSAs.		
-EIS should include alternatives to the project plan with information of their impacts.		
-There should be a section to consider the sources of uncertainty and their magnitude, and the information should be included in the conclusions. Climate Change and cumulative effects should be considered as a source of uncertainty.		
-The draft refers repeatedly to information contained in the Plan of Work. Since they are likely to be confidential, this will make very difficult to comply with the review and consultation process. The EIS should have all the relevant information needed for an independent assessment, and for this, parts of the Plan of Work might have to be included.		
<b>Specific Comments</b>		
<b>Page</b>	<b>Line</b>	<b>Comment</b>
2	67	Please add indications on the application of draft REMPS and/or additional best available information.
2	74	Please add: “6 bis: Environmental Effect means any consequences in the marine environment arising from environmental impacts caused by exploitation activities, whether positive, negative, direct, indirect, temporary, permanent, or by cumulative effect.” “6 ter: Environmental Impact means changes to the environment (physical and/or chemical) resulting from exploitation activities

2	87	Please add: “ Impact area means the area of the marine environment where environmental effects occur or are likely to occur as a result of the exploitation activities in a mining area”
2	103	Please delete the phrase “ project-specific” and instead add “region”, so that the sentence will read: “recognizes that details of methodology or thresholds are likely to be resource and region specific”.
3	116	Please add: “ Negative foreseeable impacts should be included in the EIS”
3	120	Please add: “And a description of any residual impacts that may occur despite mitigation”
4	140	Please add: “ Any residual impact that may occur despite mitigation” “Information regarding other deep-seabed activities taking place in the region in order to contextualize cumulative impacts”
5	181	Please add: “test mining”
6	244	Please add the following International Agreements: -Convention on Biological Diversity (CBD and EBSAs) -1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter -Food and Agricultural Organization -IMO -Implementing Agreement for the Conservation and Sustainable use of Biodiversity on Areas Beyond National Jurisdiction (soon to be adopted)
6	258	Please add: “ The contractor shall describe any national processes followed and permits received from the Sponsoring State in relation to the Environmental Impact Assessment”,
6	294	Please add definition of “relevant”.
7	278	Please add: “ To measure the effect of plumes on marine life, modelling of plumes, depth of discharge, composition and toxicity of sediments should be included”
7	318	Alternatives shall include the “No action” option.
8	348	Please add: “ and impact area” after “ contract area”
8	355	Please add: “and impact area” after “contract area”
9	396	Please add “ anthropogenic hazards” next to “natural hazards”

9	412	Please add: “ and impact area” after “ contract area”
12	555	Please add “ Contractors shall explain in detail the rationale for considering an impact unavoidable”
16	736	Please add to the list: “Loss of Ecosystem Services”
16	743	Consultation must be compulsory
17	763	Please add: “ Contractors shall provide a detailed description on how comments received under stakeholders consultations have been or will be taken into account, or the rationale of why they have not been taken into account”

<b>Document reviewed</b>	
<b>Title of the draft being reviewed:</b>	Draft Guidelines for the preparation of Environmental Management and Monitoring Plans
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<b>General Comments</b>	
-All Standards and Guidelines need to be guided by the Regulations. Since the Regulations are far from being agreed, the drafts open for comments must be considered preliminary and will have to be reviewed once the final draft of the Regulations has been agreed .	
Environmental Management and Monitoring Plans (EMMPs) are instrumental to ensure the effective protection of the marine environment as mandated by UNCLOS. For this reason this document should be considered to contain Standards, not Guidelines, so that they will be binding.	
EMMPs should include the effects of Climate Change	
EMMPs should be prepared and amended by the assessing body, not by the applicant or the contractor. The review should also be carried out by the assessing body. In this regard, the process would benefit from a group of experts like suggested by at 165 of the Convention, which states that the LTC is to “ make recommendations to the Council on the protection of the marine environment, taking into account the views of recognized experts in that field”.	
-Draft Regulation 11 requires all Environmental Plans to be subject to public review. Stakeholder review should be added to this document. The procedure for the assessment of public comments should also be specified.	
-Monitoring and Management measures included in the EMMP should reflect requirements and determinations of the relevant REMP	

-EMMP Standards should contain normative requirements to be fulfilled by contractor as a basis for the mining permit, including the establishment of non-mining areas. They should also contain specific information on how to mitigate and monitor every category of potential impacts.		
-EMMP must be based on the EIA and EIS, in accordance with relevant REMP and prepared in accordance with Standards, Guidelines, Good Industry Practice, Best Available Scientific Evidence, Best Available Technics, and consistent with other plans in the Regulations, including the Closure Plan and the Emergency Response and Contingency Plan		
-Performance criteria should be set so that they are measurable and corrective measures taken when required		
-If environmental data collected under EMMP are only provided to the Authority “on request” this could imply a lack of ongoing verification by ISA and over-reliance on the contractors		
-Environmental quality objectives and standards are not defined and there is no definition of where they will be found. This prevents consistency between contractors		
<b><i>Specific Comments</i></b>		
<b>Page</b>	<b>Line</b>	<b>Comment</b>
1	59	Cumulative effects must include not just other mining impacts, but also other impacts like Climate Change, fishing, submarine cables, etc.
1	62	The scope of the EMMP should allow for the monitoring of environmental effects of mining, not just the effectiveness of the mitigation measures
2	113	There are no Fundamental Policies, only Fundamental Principle. Policies might be characterized as Relevant, but not Fundamental, as that would place them at the same level as Principles, who are in a higher level of hierarchy.
2	120	Please add after “EIA, EIS, EMMP” the following. “and relevant REMP and Standards”
3	154	Please change where it says: “as part of the Approval of a Plan of Work” to “as part of the <b>application</b> of a Plan of Work”. The previous language (approval) takes for granted that it will be approved.
4	218	Please add: “Can only be applied where the contractor and the ISA have set clear and measurable environmental goals, objectives, targets, indicators and thresholds and developed a monitoring programme that can demonstrate that said goals, objectives, targets, indicators and thresholds are achieved”
6	273-274	Environmental objectives should be clearly defined
7	302	Please add a definition of a significant environmental event that allows to distinguish from a non-significant environmental event
9	389	Monitoring should focus beyond the evaluation of the characteristics of the plumes; it should also allow for the evaluation of their effects on the marine environment

9	398	Performance assessment must be conducted independently, not by the contractor.
10	455,461	Trigger values should not be determined by contractors. They should be determined by independent parties based on science, and they should be applied across contracts.
11	493	It should not be the contractor who decides how often performance assessments are carried out. A review period should be specified.
12	518	Performance assessment must be done by qualified, competent independent persons
12	532	The section on mining discharges should prohibit dumping of chemical additives
12	559	It should be stated which specific conventions and legislation the discharge might comply with
16	643-651	Competent persons should also be independent of the ISA to avoid conflict of interests
16	678	Reporting on long term effects should be mandatory