



Template for the review of the draft standards and guidelines associated with the Draft regulations on exploitation of mineral resources in the Area

I. Background

1. The Draft regulations on exploitation of mineral resources in the Area ([ISBA/25/C/WP.1](#)) require that certain issues are addressed in accordance with, or taking into account, standards and guidelines to be developed by the organs of the Authority. The standards will be adopted by the Council and will be legally binding on Contractors and the Authority, whereas the guidelines will be issued by the Legal and Technical Commission or the Secretary-General and will be recommendatory in nature.
2. Stakeholders consultations are an integral part of the process decided upon by the Commission for the development of the standards and guidelines ([ISBA/25/C/19/Add.1](#)).
3. The Legal and Technical Commission will consider the comments received through the stakeholders consultation at its next session.
4. The drafts include a cover page containing substantive background and contextual information on the approach taken by the Commission in developing each standard and guidelines. Review comments are not being sought on this background information.
5. Issues of format and consistency across the standards and guidelines will be reviewed by the secretariat and Commission once the content of the various standards and guidelines is finalized following stakeholders consultations.

II. Submitting Comments

6. To ensure that your comments are given due consideration, please send them by e-mail to ola@isa.org.jm, at your earliest convenience but **no later than the date announced on the ISA website for the relevant draft standards and guidelines**.
7. When submitting comments, please adhere to the following guidance as much as possible:
 - a. Please provide all comments in writing and in an MS Word .doc or .docx format using the table provided below.
 - b. The table format allows for an unlimited number of comments to be added. To add more comments, you may add more rows.

- c. Please provide full contact information for the individual/Government/organization submitting the comments.
 - d. Please avoid commenting on issues related to format, grammar, spelling or punctuation, unless it affects the overall meaning of the text, as the document will be formatted and edited when the final draft is prepared.
 - e. To facilitate the revision process please be as specific as possible in your comments. In areas where you feel additional or alternative text or information is required, please suggest what this text may look like or what information should be included.
 - f. Text may be copied from the draft into the table if stakeholders wish to use "track changes" in editing text (this is encouraged to ensure accuracy and avoid numbering errors).
 - g. If you refer to additional sources of information, please include these with your comments when possible or provide a complete reference or hyperlink.
 - h. All review comments will be posted on the ISA website, unless otherwise requested by the submitting entity.
8. Should you have any questions regarding the review process, please contact ola@isa.org.jm.

III. Template for Comments

- 9. Please use the review template below when providing comments.
- 10. Line and page numbers have been provided in the drafts. Please use these as a reference as illustrated in the table below.

TEMPLATE FOR COMMENTS

<i>Document reviewed</i>	
Title of the draft being reviewed:	Draft standard and guidelines on the form and calculation of an environmental performance guarantee
<i>Contact information</i>	
Surname:	GUILLEN-GRILLO
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General Comments		
<ul style="list-style-type: none"> • Costa Rica believes that the Environmental Performance Guarantee should cover not just closure related obligations, but any other environmental related costs that the contractor cannot or is unwilling to cover, including in cases of bankruptcy or other situations of insolvency, and throughout the life of the exploitation contract as well as beyond the closing of the operation. • Costa Rica does not agree on the approach taken by the LTC where they state that there should be a balance so that the environmental performance guarantee does not hinder the ability of the contractors to participate in the activities in the area. There is nowhere in UNCLOS where the effective protection of the marine environment can be disregarded in order for the contractor to be able to exploit the seabed. Article 145 is clear, as is SDG 14. • It should not be up to the contractor to determine the nature and amount of its Environmental Performance Guarantee. The role of the LTC and the Council in this regard should be specified and standard criteria for its assessment should be developed by the ISA. Also, Costa Rica does not consider a “self-guarantee” sufficient. • The Authority make sure that if the Environmental Performance Guarantee depends on a bank or another financial institution, due diligence studies are performed to ensure the financial capacity of said institution. • Since the Standards are legally binding, the language used throughout the documents must reflect this. 		
Specific Comments		
Page	Line	Comment
3	34-38	The scope of the EPG should cover not just closure related obligations, but any other environmental related costs that the contractor cannot or is not willing to cover, including in cases of bankruptcy or other situations of insolvency, and throughout the life of the exploitation contract, as well as beyond the closing of the operation. Decommissioning, removal of infrastructure and post-closure should only be undertaken by the Authority in exceptional circumstances because this is a responsibility of the contractor. Bankruptcy may be a reason, but that is not well reflected on the document.
3	41	The paragraph should include the phrase at the end: “ this should then be approved by the Assembly”
3	44	It should be clear that this is an estimate. Costs and expenses regarding rehabilitation and mitigation depend on several factors that are by definition unknown before they are triggered by the activities of the project. Even after impacts have occurred, costs entail a certain amount of uncertainty. Calculations should take into account this and provide a conservative approach (lines 71 to 73 refer to this issue). Also, there should be clarity regarding what is understood for “and independently validated method”

	52-53	The Authority must have the power to require the EPG before the date of production in cases where high risk activities are planned before the production date.
3	55-57	The Authority must have the power to require the EPG to remain beyond the life of the exploitation contract, because science has proven that liabilities may be discovered long after the activities have ended.
3	58	The EPG should be transferred to ISA before the start of the activities and ISA should keep the EPG and have it available in the exceptional cases it is needed or in case a release is in order. The rules must endure that the Authority has access to the funds on every form of EPG . The self-guarantee/company guarantee options should be deleted.
4	70	A list with the forms of guarantee accepted should be included in these Standards, so that they become legally binding
4	91-93	Delete the exception of tortious liability for environmental damage.
5	96-97	For coherence use “greatest reasonably credible cost” instead of “highest reasonable cost”
5	115-117	It is not clear the process and who will be responsible to identify an “endorsed method”. The same goes for the “accepted calculation tool”.
5	116	EPG shall not be limited to covering costs arising from the closure plan.
5	126-127	It should not be left to the discretion of the contractor which EPG to offer. Parameters shall be developed and the Authority must have the power to require a specific form of EPG in particular situations, defined in the parameters.
6	138	It must be clear that there should be individual EPGs for each mining area. The text should be amended to read: “ A guarantee is required for all Mining Areas ...”
6	143-144	The calculation of the EPG must not be based only on closure plans, as we have already mentioned above.
6	155-161	What does independent validators mean? Independent from whom? Criteria for their eligibility should be developed
7	188	The EPG confirmation should be issued by the Authority, not by the contractor
7	203	This might create uncertainties regarding the liability for environmental impacts in the same area and probably disputes among contractors leading to long legal processes and lack of mitigation actions required to treat an environmental impact which may make its consequences more difficult to deal with.
7	206	The definition of group or consortium might not be ideal in terms of assigning individual responsibilities unless the ‘leading member’ takes on all responsibility. Who would be ‘the contractor’ in those cases?
8	209	This requirement should apply to all contractors, not only to a consortium contractor.
8	215,228. 232	Both the current as the future capacity of a sufficient guarantee must be included, it should not be one or the other.
	242-244	Third party guarantors should be an option

9	251-267	The EPG only covers the closure stage. Post-closure is not covered by any financial guarantee, therefore compliance with post-closure activities and objectives is uncertain. There is no incentive to carry out this stage. Post closure must be specifically covered. Release of obligations must not occur until the project is completed. A change of control in a contractor shall not imply a release of the EPG. The contractor per se remains the same .
13	333-340	The scope of the EPG should cover not just closure related obligations, but any other environmental related costs that the contractor cannot or is not willing to cover, including in cases of bankruptcy or other situations of insolvency, and throughout the life of the exploitation contract, as well as beyond the closing of the operation.
13	348	EPG should be reviewed periodically; we suggest every 5 years. Review guidelines should be included in the standards
13	369-375	Costa Rica does not support self-guarantee/company guarantee. These options should be eliminated.
15	418	Guidance should be included regarding the types of EPG and whether some of them must be utilized under specific circumstances. It should not be a decision of the contractors. The role of the Council /LTC should be specified.
15	422-433	In relation to the cost estimation tool, Costa Rica believes the Authority should develop a set of cost estimation tools for calculating the EPG. It would benefit transparency.
15	444	The EPG confirmation should be issued by the Authority, not by the contractor
<i>Additional rows can be added to this table by selecting "Table" followed by "insert" and "rows below"</i>		

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