



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 development and application of environmental management systems
<i>Contact information</i>	
Surname:	Broggiato
Given Name:	Arianna
Government (if applicable):	
Organization (if applicable):	European Commission
Country:	

E-mail:	Arianna.Broggiato@ec.europa.eu
General Comments	
<p>The European Commission is of the view that marine minerals in the international seabed area cannot be exploited before the effects of deep-sea mining on the marine environment, biodiversity and human activities have been sufficiently researched, the risks are understood and the technologies and operational practices are able to demonstrate no serious harm to the environment, in line with the precautionary principle. Therefore strong and robust standards and guidelines need to be in place, together with the Regulations on Exploitation, before any contract for exploitation is granted.</p> <p>In addition, it is crucial having in place a system capable of continuous monitoring of the exploration and exploitation activities, so the permitting and supervising Authority can access it remotely and at any moment. This system must allow the monitoring of environmental parameters and of the implementation of the Plan of Work.</p>	
<p>In accordance with Regulation 7 the applicant (Contractor) should submit for approval his plan of work together with the EIS (point 3(d)) and the environmental management and monitoring plan (point 3(h)). However, the applicant is not obliged to submit the EIA itself. According to Regulation 47. 3 b) the Environmental Impact Statement is based on the results of the environmental impact assessment, so there seems to be a difference between EIA and EIS. Therefore, in order to ensure the objectivity of the EIS, the operator should be obliged to submit also the EIA to the Authority and there should be a check to verify that the content of the EIS is indeed based on the results of the EIA.</p>	
<p>There is no independent step in the whole Contractor's EMS. The whole process is only contractor driven: the contractor is assessing its own leadership and policy characteristics (lines 117-118 page 4); establishing the environmental policy (lines 132-133 page 5); establishing its own environmental objectives (lines 135-136 page 5); evaluating the results of the strategy to achieve the environmental objectives (line 159 page 5); detecting non-conformity (line 241 page 7); establishing monitoring activities (line 37 page 2) and evaluating and assessing the results of the monitoring activities (line 326 page 9). In accordance with Regulation 46.2 b) the EMS shall be capable of cost-effective, independent auditing by recognized and accredited international or national organizations. In the process described in the SG there is no independent review and no third party audit.</p>	
<p>According to Annex IV 11.2 there seems to be cases where a fully-fledged EMS would not be included in the Environmental Plans or in the Plan of Work: therefore there would be no link between the EMS and the reviewed (by the LTC) documentation of the Environmental Plan and the Plan of Work. It should be clearly stated in the Exploitation Regulations that it would be compulsory for the Contractor to develop the EMS in line with the submitted and evaluated EIS and Environmental Plan.</p>	
<p>Due regard should be given to other activities and/or installations which may be affected by the Contractor's seabed mining activities in accordance with article 147 UNCLOS: the guidelines only request the contractor to identify them, assess and have due regard for them. No coordination with relevant other operators is required, nor any plan to mitigate impacts/interference on those other activities are requested to the Contractor (lines 182-184 page 6).</p>	
<p>In light of ITLOS Advisory Opinion No.17 on Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (February 2011) the</p>	

sponsoring states could for example share responsibility with the Contractor in relation to the environmental management plans: the sponsoring state could for example be involved in an independent review of the EMS.		
<i>Specific Comments</i>		
Page	Line	Comment
2	18	Please replace “allows for” with “ensures”, and also add “reduction”: the Environmental Management System is a mean for the Contractor to <u>ensure</u> the prevention, <u>reduction</u> and control of pollution of the marine environment from mining operations.
2	20	Please add “c) ensure the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.” In accordance with article 145 b) of UNCLOS: as a matter of consistency references to UNCLOS obligations should be exact and consistent. c) and d) would then become d) and e).
2	35	In order to minimize or eliminate harmful effects on the marine environment, what is the threshold of the harmful effect that is applied? The standard should specify criteria for the threshold and elaborate on it.
2	37	Besides the monitoring activities carried out by the Contractor as part of the EMS, a monitoring and supervising system shall be in place, controlled by the Authority.
4	96	Please add an external independent review/audit of the environmental management system, in accordance with Regulation 46.2 b) “((b) Be capable of cost-effective, independent auditing by recognized and accredited international or national organizations;”)
4	105-6	In Figure 1, 'external audit' needs to be added. The EMS as pictured is a closed loop in which the contractor monitors and audits itself. External verification of its reports, claims and results is essential.
4	117	Please add “and respect” after commitment. The senior management of the contractor is responsible for the implementation of the EMS by the whole staff, themselves included.
4	117-118	What happens if the Contractor does not demonstrate leadership and/or commitment and/or respect with respect to the environmental management system? This is one of the reasons for the need of an independent step (review of audit) throughout the whole process of the EMS.
5	132-133	Please add “ <i>and be bound/respect</i> ” in the following sentence “The senior management of the Contractor should establish, implement, maintain and communicate, <u><i>and be bound/respect</i></u> an environmental policy. Responsibility of respecting the EMS lies with the senior management of the Contractor.
5	137	What does 'to be adapted to' mean? Replace 'take into account' by 'conform to'.
5	159	Please add an external, independent and transparent evaluation of the results achieved by the contractor in pursuing environmental objectives.

		The operator or the entity responsible for the implementation of the EMS can't carry out evaluation of the results.
6	182	Replace 'should' with 'shall': to give due regard to other activities and/or installations which may be affected by the Contractor's seabed mining activities is already an obligation under article 147 UNCLOS, so it is obviously the identification of those activities.
6	182-184	Once other activities and/or installations likely to be impacted by seabed mining activities will be identified, what actions will be concretely taken by the Contractor to coordinate with other operators of those activities/installations; and to minimize the impacts? The guidelines need to specify what actions are to be taken, in advance of the interference: the guidelines should require the contractor to coordinate with other operators, and not only identify them, assess the interference and exercise due regard.
6	205	This section only focus on prevention, reduction and control of pollution and other hazards to the marine environment (article 145 a) UNCLOS): there is no obligation for the EMS to ensure the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment (article 145 b) UNCLOS). Please provide guidelines to achieve this.
7	215	Replace 'should' with 'shall': the contractor is obliged to set mitigations measure by Regulations 45 and 48.
7	216	Please clarify what "low as reasonably practicable" means. What kind of threshold would be applied? According to which criteria?
7	217-218	Best available technologies (BAT) and best available techniques should be used always and not only "whenever possible"
7	220	What are the objectives of the operational criteria? They should be the objectives of article 145 UNCLOS.
7	239	What kind of chemicals are referred to here? What is the purpose of this sentence about equipment and chemicals? (227-236 already implies that technical equipment and substances may be used in mitigating measures)
7/8	241-264	What if the non-conformity is not detected by the Contractor? This could exactly be avoided with independent review and audit.
8	260	Replace 'it is important that' by 'It is the Contractor's obligation to ensure that'.
8	263-264	The result of the audit must be documented and included in the notification reports to the Authority. Independent verification by the Authority ought to be possible.
9	319	Replace 'should' with "shall"— otherwise the monitoring plan risks being irrelevant, moreover the Environmental Monitoring Plan has been submitted and reviewed by the LTC.
8	322-332	The contractor establishes the environmental monitoring plan, conducts the monitoring activities and establishes the criteria to evaluate the results of the monitoring activities. There is no external review of the evaluation of the results, which is needed. With no prejudice of internal (operator)

		evaluation performance systems, the Authority should ultimately be the one responsible for the evaluation performance.
9	336-336	The reports on the results of the evaluation of the performance delivered to ISA needs to be publicly available, to allow a public scrutiny. A regular evaluation needs to be in place, carried by out the Authority or by an independent body contracted by the Authority.
9	337	Add: 'At its request, ISA must receive full monitoring and evaluation reports'
9	339	Replace 'should' with 'shall'
9	351	Add that "subcontracting appropriate providers and expertise can also be a means to take corrective action". Add to financial resources that they can provide the means 'to fund corrective action'.
10	359	Please add that these annual reports should be publicly available. Replace 'should' with 'shall'.
11	389	There is no trigger for a third party audit in the SG. Regulation 46 requires the EMS to "(b) Be capable of cost-effective, independent auditing by recognized and accredited international or national organizations".
11	392-393	All audits are conducted by the contractor, none by a third party.
11	399-400	How can the audit team be independent?
13	492-493	Please add "within a reasonable amount of time"/ "within X days"
<i>Additional rows can be added to this table by selecting "Table" followed by "insert" and "rows below"</i>		

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