

<i>Document reviewed</i>		
<b>Title of the draft being reviewed:</b>		<b>Draft standard and guidelines on the development and application of Environmental Management Systems developed by the Legal and Technical Commission</b>
<i>Specific Comments</i>		
<b>Page</b>	<b>Line</b>	<b>Comment</b>
2	18	<p>Paragraph 3 outlines the elements that an Environmental Management System should have. It specifies the “prevention and control of pollution”, however, this is only one aspect of the potential impacts that need to be mitigated. Article 14 of the Convention on Biological Diversity (CBD) requires Contracting Parties to “introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account”. The CBD Conference of Parties has also developed further guidance in this respect, namely the Voluntary Guidelines on Biodiversity-Inclusive Impact Assessment (COP decision VIII/28), which were subsequently annotated specifically for biodiversity in marine and coastal areas, including in areas beyond national jurisdiction (UNEP/CBD/COP/11/23).</p> <p>Furthermore, “allows” can be seen as somewhat soft language in view of the requirement under various international instruments for States to prevent damage to the marine environment and biodiversity.</p> <p>As such, paragraph 3(b) could be re-written as follows:  <u><b>“Outlines the necessary actions to be taken to prevent and mitigate impacts to the marine environment and its biodiversity from any mining-related activities, as well as restoration and rehabilitation of impacted areas and species.”</b></u></p>
6	177	<p>As these standards and guidelines are focused on environmental management systems, it should be made clear that the “...applicable national and international legal requirements” are those related to environmental considerations. As well, it would be useful to note some specific global level international legal requirements, such as the Convention on Biological Diversity (CBD), which applies to the processes and activities of Parties, regardless of where their effects occur, carried out under their jurisdiction or control, within the area of national jurisdiction or beyond the limits of national jurisdiction (Article 4).</p> <p>As such, the paragraph could be re-written as follows:  “The Contractor should identify applicable national and international legal requirements, rules and standards <u><b>related to the marine environment, including those contained in the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention on Biological Diversity (CBD)</b></u> and communicate internally the relevance of these obligations, as well as obligations arising from the Exploitation Regulations to relevant parties within the Contractor’s organization.</p>
6	192-193	<p>The properties listed in the parentheses do not include ecological properties. Article 7 of the CBD obliges Parties to identify components of biological diversity important for its conservation and sustainable use (Article 7(a)) for the purposes of in-situ conservation and sustainable use. This would include an understanding of the</p>

		<p>ecological dynamics and relationships among the species and communities in that area.</p> <p>As such, the paragraph could be re-written as follows:          “The Guidelines on the scope and standard of baseline data collection provide guidance on how the Contractor should identify the current status of the seabed (e.g. physical, geological, biological, <b><u>ecological</u></b>, chemical, sediment properties) before starting any mining activities.”</p>
7	227-263	<p>Paragraph 26 addresses a hierarchy of controls for mitigating measures. However, there is no guidance on restoration and rehabilitation in cases where environmental impacts have already taken place. This inclusion of such a provision is in line with Article 8 of the CBD.</p> <p>As such, an additional bullet may be added to paragraph 26, as follows:</p> <ul style="list-style-type: none"> <li>• <b><i>“Rehabilitate or restore degraded ecosystems when impacts have already occurred”</i></b></li> </ul>
8	248-258	<p>Related to the above comment, a point regarding rehabilitation and restoration is needed under paragraph 30(a).</p> <p>An additional bullet may be added to paragraph 30(a), as follows:</p> <ul style="list-style-type: none"> <li>• <b><i>“rehabilitating or restoring degraded ecosystems when impacts have already occurred”</i></b></li> </ul>
8	270-272	<p>In paragraph 34, the term “environmental issues” is vague and can be open to differing interpretations.</p> <p>As such, the paragraph could be re-written as follows:  <i>“Procurement: The Contractor should establish a process to ensure environmental issues are taken into consideration when ordering and procuring equipment and other physical assets, and when engaging subcontractors, <b><u>ensuring that equipment and other physical assets used are those that produce no to minimal environmental impacts.</u></b>”</i></p>
10	333-334	<p>It should be made clear in paragraph 40 that trends may be evaluated regardless of whether environmental impacts have gone beyond limits/standards, as the detection and analysis of negative trends can inform action in avoiding severe environmental impacts.</p> <p>As such, the paragraph could be re-written as follows:          “In addition, the trends may be evaluated, whether there is a positive trend (improvement in environmental performance) or negative trend, <b><u>regardless of whether significant adverse impacts have occurred or are considered likely to occur.</u></b>”</p>
10	342-343	<p>There is an important missing element from Paragraph 43. If environmental performance criteria are not being met and the Contractor does not have the resources to improve performance and meet its objectives, then in addition to seeking more</p>

		<p>resources, another important step is that mining should be stopped or scaled-down until the Contractor is able to meet such objectives.</p> <p>As such, the paragraph could be re-written, as follows:          “If the Contractor does not have the necessary resources to do this, <u>mining activities must be halted or scaled-down until the Contractor is able to meet performance criteria. The Contractor may seek additional resources to meet the performance criteria, which could include</u> one or several resources such as:</p> <ul style="list-style-type: none"> <li>• human resources;</li> <li>• infrastructure resources;</li> <li>• financial resources.”</li> </ul>
12	447	<p>In paragraph 59(d), it should be made clear that an action that may be required when environmental objectives are not being met is the cessation or scaling-down of mining activities until objectives are able to be met.</p> <p>As such, the paragraph could be re-written, as follows:          “actions, if needed, when environmental objectives have not been achieved, <u>including halting or scaling-down of mining activities;</u>”</p>

<i>Document reviewed</i>	
<b>Title of the draft being reviewed:</b>	<b>Draft standard and guidelines on the form and calculation of an Environmental Performance Guarantee developed by the Legal and Technical Commission</b>
<i>General Comments</i>	
<p>While the draft standards and guidelines outline the requirement to adopt “...an independently validated method and calculation for 100% of the costs, expenses and liabilities of the EPG Scope”, there is no guidance on proposed methodologies to assess and quantify residual environment risk, which could entail an element of economic valuation.</p> <p>Existing work on environmental liability and the methodologies to assess monetary compensation payments can be instructive to the development of such guidance. One example of previous work, which can be instructive to the ISA, is the European Directive on Environmental Liability.</p> <p>Further guidance should also be developed to provide more clarity for what is meant by the “residual environmental effects”, for example, to address the following:</p> <ul style="list-style-type: none"> <li>• Types of effects that are included within the scope of this guarantee;</li> <li>• Whether this addresses environmental elements for which restoration is feasible. And, if so, over what period of time?;</li> <li>• Means to determine whether or not restoration is actually feasible</li> </ul>	