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20 October 2020

## **IUCN Comments on the draft standards and guidelines prepared by the Legal and Technical Commission and the Secretariat of the International Seabed Authority (ISA)**

IUCN is pleased to submit its comments on the three sets of draft guidelines and standards for deep-sea mining: 1) Draft standard and guidelines on the development and application of environmental management systems; 2) Draft standard and guidelines on the form and calculation of an environmental performance guarantee; and 3) Draft guideline on the preparation and assessment of an application for the approval of a Plan of Work for exploitation. IUCN has combined comments on all three documents into this single document.

As an overarching comment, IUCN remains concerned that these documents are hasty and insufficient to protect the interests of humankind as a whole. The draft regulations upon which these preferred Standards and Guidelines are based are incomplete. Until there is a sufficient scientific basis and technological capacity to ensure that the ISA exploitation regulations and associated measures are able to ensure the effective protection of the marine environment as required in UNCLOS Article 145, and able to avoid, prevent and effectively respond to incidents threatening to cause significant harmful effects, the draft Exploitation Regulations and related Standards and Guidelines, remain premature.

Kindly note that the Sargasso Sea Commission wishes to formally associate itself with these comments.

We give our consent for these to be posted publicly.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Minna Epps', written in a cursive style.

Minna Epps

Director, IUCN Global Marine and Polar Programme

**TEMPLATE FOR COMMENTS**

<i>Document reviewed</i>		
<b>Title of the draft being reviewed:</b>	Draft standard and guidelines on the development and application of Environmental Management Systems developed by the Legal and Technical Commission	
<i>Contact information</i>		
<b>Surname:</b>	Epps	
<b>Given Name:</b>	Minna	
<b>Government (if applicable):</b>		
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<b>E-mail:</b>	<a href="mailto:Minna.EPPS@iucn.org">Minna.EPPS@iucn.org</a>	
<i>General Comments</i>		
1. This document providing draft standards and guidelines for Environmental Management Systems is both too early and too late. The relevant draft regulation (DR 46) remains incomplete, inadequate and requires substantial improvement before it can serve as the basis for Standards and Guidelines.		
2. Many of these elements should already be reflected in the Exploration Regulations as an Environmental Management System needs to be in place early on. Once again, IUCN suggests it is time to update the Exploration Regulations to ensure that many of these key components are already in place to guide the improvement of performance so the contractor is able to demonstrate it can satisfy the environmental and technical feasibility requirements for deep seabed mining (eg through satisfactory conduct of a test mining operation and assessment).		
3. At the same time, effective science-based standards, objectives and indicators at both regional and site-specific scale need to be in place to inform the goals and content of the Environmental Management System.		
4. Regarding baseline data, the draft only refers to baseline data from the seabed. Baseline data on the water column including the midwater column as well as seasonal variation in the oceanographic and ecological conditions are similarly necessary for an adequate understanding of potential impacts and effects over time.		
5. Regarding baseline data, we refer the reader to Drazen et al. (2020). Midwater ecosystems must be considered when evaluating environmental risks of deep-sea mining, Proceedings of the National Academy of Sciences Jul 2020, 202011914; DOI: 10.1073/pnas.2011914117/ <a href="https://www.pnas.org/content/early/2020/07/07/2011914117">https://www.pnas.org/content/early/2020/07/07/2011914117</a>		
<i>Specific Comments</i>		
Page	Line	Comment

Annex 1		
2	15	Please add “and relevant Regional Environmental Management Plan (REMP).” Rationale: Any EMS must deliver site specific outcomes consistent with environmental objectives and standards set forth in a broader framework of a REMP.
	18	Replace “allows for the prevention and control of pollution” with: ensures the effective protection of the marine environment consistent with UNCLOS Article 145, the Principles in DR 2 (including avoiding loss of biological diversity and ecological integrity) and the relevant REMP. Rationale: the ISA’s and the contractor’s obligation are far broader than just pollution, and this needs to be a requirement, not an enabling factor.
	28	Replace “shall undertake” with “demonstrate that it has undertaken” the four key steps. Rationale: it is the results that are important, not the act of undertaking this process.
	31	Replace: “key issues” with “all aspects” of the mining operation. Rationale: there needs to be a comprehensive understanding of the potential effects of the mining operation on all aspects of the marine environment in order to plan and carry out operations to prevent harmful effects as required under UNCLOS Article 145; to avoid significant adverse effects as called for by SDG 14.2 and the loss of biodiversity as call for by the Convention on Biological Diversity.
	34-35	Replace “minimize or eliminate” with “avoid and prevent” : Rationale: the obligation is to ensure the effective protection of the marine environment, and to avoid harmful effects. Standards and indicators need to be in place to enable performance to be measured
	39.	Please insert a new (c)bis. Ensure that technology is available to enable real time monitoring and assessment and to effectively respond to reduce environmental impacts when indicators reveal a need for action to avoid harmful effects. Rationale: The deep-sea environment is fragile and harmful impacts will be difficult if not impossible to repair. Thus, technologies must be available to enable the contractor to intervene to preempt harmful effects.
	40	Please add at the end “...and a process to ensure effective follow-up.”
		Time did not permit detailed comments on Annex II: Draft guidelines on the development and application of environmental management systems

*Comments should be sent by e-mail to [ola@isa.org.jm](mailto:ola@isa.org.jm)*

**TEMPLATE FOR COMMENTS**

<i>Document reviewed</i>	
<b>Title of the draft being reviewed:</b>	Draft standard and guidelines on the form and calculation of an Environmental Performance Guarantee developed by the Legal and Technical Commission
<i>Contact information</i>	
<b>Surname:</b>	Epps
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<i>General Comments</i>	
1. The draft is premature as it is seeking to implement Draft Reg 26 which has yet to be agreed. The scope of the Environmental Performance Guarantee (EPG) outlined in DR 26 and here is much too narrow to be effective, efficient or equitable.	
2. The discussion of “balance” is misguided as it shifts the consequences of environmental harm onto “humankind” as a whole, including future generations. Compliance with the environmental and human life protection requirements of UNCLOS Article 145 and 146 need to remain the overriding prerequisites	
3. By leaving the calculation of the EPG in the hands of the contractor, the draft offers no assurance that the EPG will be sufficient to cover the full costs of environmental harm either during mining operations or after closure.	
4. The EPG concept as reflected in the draft needs to be reconsidered so that it reflects the overarching objective that an EPG should ensure that environmental harm is minimized, remediated and compensated for, and that it protects the ISA from incurring unexpected costs and liabilities as a result of contractor lack of funds.	
5. The draft leaves too much flexibility in the hands of the contractor, as not all forms of financial security are the same and not all methods of calculation are equivalent.	
6. The Guidelines should also envision a role for the Council and stakeholders to review the form and amount of the EPG, as the sufficiency of the EPG is a matter of public concern.	

**TEMPLATE FOR COMMENTS**

<b>Document reviewed</b>		
<b>Title of the draft being reviewed:</b>	Guideline on the preparation and assessment of an application for the approval of a Plan of Work for exploitation developed by the Legal and Technical Commission	
<b>Contact information</b>		
<b>Surname:</b>	Epps	
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<b>General Comments</b>		
1. The draft Guidelines for the preparation and assessment of a Plan of Work are premature as they should reflect the final version of Annex I of the exploitation regulations, which still require much work.		
2. The draft fails to include possibility of rejection of proposed Plan of Work (PoW) if fails to comply with rules, regulations, procedures and meet the related Standards and Guidelines. The approval of a PoW needs to be more than a checklist exercise.		
3. As deep seabed mining is a new industry without precedence, references to existing bodies of practice and international standards from other "similar" industries is misplaced. For standards to be binding, they need to be and should be adopted through transparent and inclusive processes under the ISA, and not cross-referenced from other dissimilar industries.		
4. The LTC should similarly be given specific scientific standards and guidelines upon which to base their decision to approve or reject. The current draft does not serve that purpose so another document including substantive and precautionary Environmental Standards, explicit Criteria and guidelines for approval or rejection of a POW are still needed		
5. In addition, there should be similarly robust Standards and Guidelines for both the applicant and the LTC regarding requirements and criteria to demonstrate financial and technical competence.		
<b>Specific Comments</b>		
<b>Page</b>	<b>Line</b>	<b>Comment</b>
Annex 1	Line 54	Title should be changed to reflect that this is an assessment process for a plan of work; approval is not preordained.
4	Row 1	Information concerning previous contracts: Please add "and history of performance, including any prior incidents regarding performance/compliance"

5	Row 2 (DR5)	“effectively controlled” –need a separate set of Standards to enable the LTC and others to assess whether the sponsoring State has “effective control” and/or whether all relevant States are part of the submission.
	Row 3 (DR6)	“effective control” —need more than a Statement that the applicant is subject to effective control of sponsoring State-need evidence to document that this, based on Standards adopted by the ISA
9	54	Need to retain option/box for rejection
		Need to ensure realistic timelines, 60 days for comments on POW is too short
		Both feasibility study and Environmental Plans should be posted on ISA website for at least 120 days, not just 60 days

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