



**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](mailto: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](mailto: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><b>Document reviewed</b></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><b>Contact information</b></i>	
<b>Surname:</b>	O'Brien
<b>Given Name:</b>	Gregory
<b>Government (if applicable):</b>	United States of America
<b>Organization (if applicable):</b>	Department of State
<b>Country:</b>	USA
<b>E-mail:</b>	OBrienGJ@state.gov
<i><b>General Comments</b></i>	
<p>While the United States appreciates the opportunity to review these draft Standards and Guidelines on the development and management of environmental management systems, the United States has concerns regarding the current lack of appropriately specific standards and technical guidelines, tailored to the exploitation of different minerals, namely, cobalt-rich ferromanganese crusts, polymetallic nodules, and polymetallic sulfides.</p> <p>Generally, the draft Standards and Guidelines should reference, link, and incorporate the ISA's "Recommendations for the guidance of contractors for the assessment of possible environmental impacts arising from the exploration for marine minerals in the Area" in order to give a more complete picture of what these Standards and Guidelines should be encompassing. As it stands, these draft</p>	

Standards and Guidelines seem more focused on process and management than setting forth specific environmental recommendations to address possible environmental impacts.

Specifically, in many places this draft sets forth guidelines for what a Contractor should prepare to present to the ISA, but falls short in setting forth the specific and measurable standards that a Contractor is required to meet. Setting forth an aspirational objective as the standard in the context of mining, e.g., preventing harm to the marine environment, is unrealistic and ignores the nature of this inherently destructive activity. Rather, this standard should address the question of what is an acceptable level of harm in calculable terms.

The United States understands the need to take an approach to environmental management that recognizes the risks and best practices for a burgeoning industry, but it is vital that the ISA set its own measurable standards, enforce them, and provide clear guidance regarding implementation of the Exploitation Regulations. The current draft appears to rely heavily on Contractors to define the appropriate means of complying with the Exploitation Regulations. For example, under “Evaluation of Performance,” paragraph 49, lines 324-324 state, “The results from the monitoring activities should be evaluated according to the criteria, method and frequency as defined by the Contractor.” The United States is concerned that the extent of reliance on Contractors to define environmental metrics may undermine the ISA’s efforts to effectively administer its environmental protection responsibilities.

The United States believes that the purpose of this draft standards and guidelines should be to provide more detailed guidance on regulatory requirements. To that end, this draft should focus more specifically on the components of the “environmental management system” that are required by the draft Exploitation Regulations, including (1) the expected components of an environmental management system and (2) how the various environmental processes envisioned in the regulations are distinctive and will work together (e.g., the EIA, Environmental Management and Monitoring Plan).

Finally, throughout the standards and guidelines there needs to be much greater precision with the use of determinative words. For example, in this draft, lines 241-264 address “nonconformities” without defining the term (other than providing a single example).

In the specific comments below, we include a few indicative examples of areas where the text could be improved to begin to address these more general concerns.

***Specific Comments***

<b>Page</b>	<b>Line</b>	<b>Comment</b>
2	4	Paragraph 1 of the draft references “the overall management system”; however, this is not a term that is otherwise defined. While there is a proposed definition for “Environmental Management System” in the draft exploitation regulations that includes the term “overall management system,” the United States is concerned that this terminology introduces the potential for confusion. Clarifying this term to include a reference to “overall project management system” or “overall mining management system” could help to clarify the meaning of this term.
2	7	The term “environmental objectives” is used throughout the Guideline for Environmental Management Systems; therefore, the term “goals” in this line should be replaced with “objectives,” for consistency and clarity.

2	15-16	Support this formulation, and would propose that this language replace Draft regulation 46(2)(a).
2	18-19	Propose that paragraph 3(b) be modified to stipulate that an Environmental Management System “ <u>allows provides</u> for the prevention, <u>reduction</u> , and control of pollution of the marine environment from mining operations, <u>consistent with the environmental objectives established by the Environmental Management and Monitoring Plan</u> ”
2	12-26	Note that draft exploitation regulation 46(2) requires that the Environmental Management system also: “(b) Be capable of cost-effective, independent auditing by recognized and accredited international or national organizations; and (c) Permit effective reporting to the Authority in connection with environmental performance.” Those requirements are not reflected here, along with a requirement to be based on the best available scientific information.
2	31	The United States believes that paragraph 4(a) should be reformulated to require that a Contractor “identify and manage impacts from seabed mining on the marine environment.” Limiting this consideration to “key issues” may limit the consideration of environmental impacts from deep sea mining. Additionally, a requirement that the Contractor “understand” such issues is likely too high a standard, and may limit consideration of environmental impacts, given the uncertainty surrounding the environmental impacts of deep sea mining.
2	34-35	Paragraph 4(b) should be revised to include prevention of harmful effects to the marine environment.
2	40	The United States believes that paragraph 4(d) should specify that the activities identified are in relation to environmental impacts. This could be reformulated: “assess the environmental impact of its operations and identify strategies for prevention, reduction, or elimination of such effects.”
3	79	Propose replacing “describes how to” with “provides guidance regarding,” to avoid potential confusion regarding the status of the Guidelines as not legally binding.
5	120	The United States proposes that paragraph 9(b) be amended to reflect the reason that sufficient resources should be available, such as: “ensuring sufficient resources are available for supporting environmental management systems.”
5	132-33	This is an example of an internal Contractor practice that, while important, is not what the United States understands should be the focus of this draft.
5	133	“Environmental policy” is not defined.
5	135	Any environmental objectives established should be included in, or consistent with, the Environmental Management and Monitoring Plan. Therefore, the United States would propose to include a reference to the Environmental Management and Monitoring Plan in paragraph 11, to clarify the relationship between the Environmental Management and Monitoring Plan and the Environmental Management System.
5	141-46	Paragraph 12 should also include a reference to reliance on the best available scientific information.
5	148-50	While the distinction between short term and long term goals is noted and appreciated, the United States believes that environmental objectives should also take into consideration the entire length of the license.

6	182-83	Paragraph 18 states that “The Contractor <i>should</i> identify activities and/or installations which may be affected by the Contractor’s seabed mining activities” (emphasis added). While the guidelines are not legally binding, this sentence reflects a requirement in the draft exploitation regulations and UNCLOS that contractors exercise due/reasonable regard for other uses of the marine environment. Therefore, this paragraph should reflect the legal requirement.
6	183-84	We recommend deletion of the list. Any list risks prioritizing or deprioritizing activities inadvertently, therefore, we believe that it may be best to delete the list altogether.
6	186-87	Paragraph 19 does not fully reflect the idea of “reasonable” or “due” regard in the regulations and the Convention. The contractor must manage potential conflicts with other uses with reasonable/due regard for those uses.
7	215	Propose revision to “minimizing and mitigating” in the place of “mitigating,”
7	216	We are puzzled by the concept of “as low as reasonably practicable” and do not consider it to be a principle.
7	219-25	This paragraph seems to reflect criteria/objectives that should be included in the Environmental Management and Monitoring Plan. Additionally, in line 224 “keep documented information” should be “monitor and report”
7	227-39	We recommend adding a bullet: “limit impacts to the smallest area practicable.”
7	239	This provision seems to be the first explicit reference to allowing chemical inputs. More clarity as to what is meant here is recommended as this item is potentially relevant to the type of processing and waste release.
7	241	Nonconformity should be defined. Is this appropriate for non-binding guidance? Would there be potential enforcement action for a “non-conformity”?
9	300-04	This appears to simply restate the requirement from the regulations that an emergency response and contingency plan be completed, without providing any additional guidance.
9	308	Section VI.A provides for an “environmental monitoring plan”; however, it is not clear from the subsequent paragraphs if the referenced environmental monitoring plan is the Environmental Management Monitoring Plan established in draft exploitation regulation 48, or in addition to such Plan. If the “environmental monitoring plan” referenced in the guidelines is intended to be the Environmental Management and Monitoring Plan, suggest that exact terminology be used for clarity.
9	324-25	The results should be monitored according to standard criteria, method, and frequency, not as defined Contractor-by-Contractor.
10	342	Paragraph 43 contemplates a scenario where a Contractor may not have sufficient resources to engage in monitoring. This seems contrary to the assumptions built into the regulations that monitoring is required.
11	383-10	A note on how third-party audits will occur should be included (e.g., the ISA or a certification body may audit the Contractor without notice from time to time).
<i>Additional rows can be added to this table by selecting “Table” followed by “insert” and “rows below”</i>		

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