



Document reviewed	
Title of the draft being reviewed:	Standards and guidelines on the development and application of Environmental Management Systems development by the TLC
Contact information	
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General Comments	
Supportive of Annex 1	
Generally supportive of Annex 2 – further feedback below	
<p>The use of the terms ‘shall’ and ‘should’ need to be reviewed. Generally, mandatory language (ie. shall) should be used in the legally binding standards, whereas non-binding language (ie should) should be used in the guidelines. Notwithstanding this, where either document makes reference to a binding obligation from the regulations, the regulation in question should be explicitly referenced in the standard or guideline and the same language used (including mandatory language) to avoid any confusion.</p>	
<p>Where applicable, the terms “prevent, reduce and control” should be used consistently to refer to the hierarchy of controls for pollution and harmful effects to the marine environment.</p>	
<p>The <i>Identification of Requirements</i> on page 6 only references baseline data for the seabed. We suggest the guidelines require baseline data both for the seabed and for the associated/affected water column. We would want to ensure it is clear that all affected areas need baseline data and monitoring, e.g.:</p> <ul style="list-style-type: none"> • <i>Baseline data on the seabed and the associated water column (Line 189)</i> <ul style="list-style-type: none"> ○ <i>20. 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, chemical, sediment properties) and the associated water column before starting any mining activities.</i> 	
<p>In relation to the use of subcontractors, we suggest making it clear in the Guidelines that in accordance with Annex X: Standard clauses for exploitation contract, Section 6, a Contractor must ensure that any subcontract contains appropriate terms and conditions to ensure that the performance of the subcontract will reflect and uphold the same standards and requirements as the contract between the Contractor and the Authority. Further, that the Contractors shall remain responsible and liable to the Authority for the performance of its obligations.</p>	
It is important that these Standards and Guidelines are progressed in parallel to the Draft	

Regulations and its Annexes, and other relevant standards and guidelines to ensure consistency in the documents. Australia also emphasizes the need for continued consultation on these Standards and Guidelines to ensure they accurately reflect the final version of the Regulations and its Annexes, as well as other relevant Standards and Guidelines yet to be drafted.

Specific Comments

Page	Line	Comment
2	9	Please include 'Regulation 46' as the source of the obligation for Contractors to implement and maintain an EMS.
2	18	Please amend "prevention and control" to read "prevention, reduction and control": (b) allows for the prevention, reduction and control of pollution of the marine environment from mining operations
2	30	It is unclear what is meant by 'the core process' of an EMS and where it originates from. Grateful for clarification.
2	35	Please replace "minimise or eliminate" with "prevent, reduce and control": (b) ensure that its operations are planned and carried out in a systematic and controlled manner to minimise or eliminate prevent, reduce and control harmful effects on the marine environment
5	119	Please include "and met": (a) ensuring that environmental policy objectives are established and met
5	132	Environmental Policy: Regs do not appear to mandate what the policy will achieve or require. In principle support. Note that the environmental policy is yet to be written – expect it to be drafted in compliance with UNCLOS
5	148	Unsure of the point of this para. Will the ISA regulate which objectives are short vs long term or will the contractor have discretion?
5	152	Support the objectives based nature of the strategy
6	177	Please include a reference to 'Regulation 43' as the source of the obligation for Contractors to comply with any national laws to which it is subject.
6	182	Further to Australia's comments on the draft Exploitation Regulations, we suggest the requirement for a Contractor to identify activities and/or installations which may be affected by seabed mining activities should be identified as part of the Applicant's plan of work.
6	189	Support the baseline data section inclusion in order to build scientific knowledge against a known baseline.
6	189-193	Baseline data should be required for the seabed and the associated water column (see general comment).
6	189	Amend "on the seabed" to read "on the seabed and the associated water column": B. Baseline data on the seabed and the associated water column
6	192	Amend "on the seabed" to read "on the seabed and the associated water column": 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, chemical, sediment properties) and the associated water column before starting any mining activities.
6	195	In principle support the inclusion of this section, pending finalization of the relevant regulations (including the annexes), standards and guidelines.
7	207	Please include a reference to 'Regulation 49' as the source of the obligation for Contractors to take necessary measures to prevent, reduce and control pollution and other hazards to the marine environment from its activities in the Area.
8	248	Response when a non-conformity occurs relies only on contractor response with no mandatory investigation, audit or involvement by the ISA. In Australian regime, NOPSEMA would play a role throughout this process. The DR33 deals with 'Incidents' and requires notification to the Sponsoring State, flag State and Secretary General. We presume that a 'non-conformity' would not meet the definition of 'incident' under the regs. Clarification may be beneficial.
8	274	As noted in General Comments, in accordance with section 6 of Annex X, the subcontract must meet all the same standards and requirements as those met by the Contractor. Suggest this be specifically addressed in this section.
9	294	Subcontractor MUST notify incidents to the Contractor
9	296	Subcontractor must provide regular reporting to the contractor
9	300	Please include a reference to 'Regulation 7' as the source of the obligation that the Contractor prepare an Emergency Response and Contingency Plan.
9	332	Should think about adding environmental standards to this section
10	336	Please include a reference to Regulation 51 as the source of the obligation for a Contractor to monitor compliance with the EMMP and provide an annual report to the ISA under Regulation 38(2)(g).
10	339	The Exploitation Regulations already provide for performance assessments of the EMMP. Accordingly, we suggest lines 339-342 should be amended as follows: "The Exploitation Regulations provide at Regulation 52 that the Contractor shall conduct performance assessments of the Environmental Management and Monitoring Plan. If the performance criteria are not met, the Contractor should is obliged to take corrective action in accordance with that provision to improve the performance and meet the objectives."
10	359-367	Please include a reference to Regulation 38 on the Annual Reporting requirements of Contractors which outlines the parameters of the report, and when to report. Note also that Regulation 38 states that annual reports shall be 'in such format as may be prescribed from time to time in the relevant Guidelines...'. .
10	369	Please include a reference to Regulation 34 as the source of the obligation

		for the Contractor to notify the ISA in case of notifiable events.
11		audits. Recommend that an audit of the Contractor's EMS be changed from guideline to standard.
12	451	Given the importance of the function of a management review we recommend including management review as a standard. With this in mind, please change language to: Contractors must retain documented information...
14	517	Please include a reference to Regulation 39 which requires a Contractor to maintain listed documentation and 'any other data, information and samples connected with the Exploitation activities in accordance with the Authority's data and information management policy.'

Comments should be sent by e-mail to ola@isa.org.jm