



Document reviewed	
Title of the draft being reviewed:	Draft standards and guidelines on the development and application of Environmental Performance Guarantees developed by the LTC
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General Comments	
<p>The background to this said that the Commission considered a balanced approach should be taken between environmental concerns and ‘the need to ensure’ the development of activities in the Area. We note that the need to ensure the development of activities in the Area is not a requirement of UNCLOS and UNCLOS instead emphasises ‘[ensuring] effective protection of the marine environment from harmful effects which may arise from [activities in the Area]’ (Article 145).</p>	
<p>It is important this document is progressed in parallel to the Draft Regulations and its Annexes, and other relevant standards and guidelines to ensure consistency in the documents. Australia also emphasises the need for continued consultation on these Standards and Guidelines to ensure that this EPG accurately reflects the expectations and requirements for applicants, as they are developed.</p>	
<p>The draft standards and guidelines broadly align with what we would expect to see.</p>	
<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) in order to avoid any confusion.</p>	
<p>Before these Standards and Guidelines can be concluded, it is necessary to clearly identify the overall objectives of the EPG in the Regulations. This is necessary to determine the appropriate amount, form and calculation of the EPG.</p>	
<p>The Standard and Guideline do not address the circumstances in which an update to the EPG is required in accordance with DR 26(4). It is crucial that the value of EPG remain flexible and that this is reflected in the DRs and the Standard and Guideline as current estimations of liability and cost and Contractors are likely to be variable given uncertainties around the kinds and extent of costs that are to be incurred during exploitation activity.</p>	

<i>Specific Comments</i>		
Page	Line	Comment
3	33	Please delete “likely”. Remediation to be included in the following bullet points.
	89	Unexpected costs should be “all costs” consistent with international requirements to provide financial assurance for planned decommissioning costs.
	91	Disagree that the guarantee should not cover ordinary and foreseen operating costs. Decommissioning is a planned cost that we understand is covered by the Closure Plan and Work Plan. As such, this Standard is inconsistent with the obligation under DR 26(2) (b) and (c).
	192	Line 130 talks of credible costs. Here it is reasonably identifiable. Suggest improved consistency of wording for this concept.
	243	In accordance with DR 24, under the heading ‘[o]ngoing responsibilities’ a paragraph should be included outlining the requirement that a Contractor notify the Secretary-General of a change in control of the entity providing the EPG and that approval must be provided prior to any change taking place. In the event approval is not provided at the time of a change in control, it should be made clear that a Contractor remains liable for the full amount of the EPG. As noted in Australia’s 2019 submission, the DRs do not deal with the consequences of the Secretary-General deeming that change of control is not acceptable, this should be addressed in the DRs to enable further comments on the Standard.
	333	Should include remediation of the environment.

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