



**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, 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.

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>Document reviewed</i>	
Title of the draft being reviewed:	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>	
Surname:	O'Brien
Given Name:	Gregory
Government (if applicable):	United States of America
Organization (if applicable):	Department of State
Country:	USA

E-mail:	OBrienGJ@state.gov	
General Comments		
<p>While the United States appreciates the opportunity to review these draft Standards and Guidelines on the form and calculation of an Environmental Performance Guarantee, the United States has concerns regarding the current lack of appropriately specific standards and technical guidelines, tailored to the exploitation of different minerals. The United States also notes a number of instances where the draft standard is drafted to reflect the approval by the Commission, rather than the Council or the Assembly which we believe may be the more appropriate approval body.</p> <p>In our view, the draft standard and guidelines on the form and calculation of an Environmental Performance Guarantee has similar shortcomings to the draft standard and guidelines on the development and application of environmental management systems, in that it lays out requirements for the Contractor to self-certify it has met. For example, the document requires EPG validation, but fails to prescribe how the ISA will determine the independence and qualifications of a third-party reviewer. Under the Requirement for an independent Validation Statement, lines 155-58 state, “An Applicant or Contractor shall independently validate the form and calculation of the proposed Guarantee and produce a Validation Statement prepared and signed by an independent validator(s), confirming that the form and calculation adopted by the Applicant or Contractor is accurate.” By fully relying on the Contractor to seek independent validation of its EPG, the draft standards and guidelines do little more than set out a box-checking exercise.</p> <p>Finally, throughout the standards and guidelines there needs to be much greater precision with the use of determinative words. For example, lines 134-136 in this draft propose, “The ‘greatest reasonably credible costs” as an objective standard, yet “greatest reasonably credible” is subjective language open to varied interpretations.</p> <p>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.</p>		
Specific Comments		
Page	Line	Comment
4	12	Add a comma between “Contract” and “or” → “...ordinary and foreseen operating costs, such as the costs of compliance with conditions of the Exploitation Contract, or tortious liability for environmental damage,” unless “tortious liability for environmental damage” is considered “ordinary and foreseen.”
3, 12	36, 338	The United States is pleased to see the use of “any” here, as there may be cases where leaving installations and/or equipment may be better environmental management than removing “all,” as is in the current draft regulations.
5	114	The United States notes that Paragraph 18 requires that an applicant propose a Guarantee “in a form acceptable to the Commission.” As the Council ultimately considers the application for approval, the United States suggests that the form of the Guarantee be acceptable to the Council.
10	Figure 2	This figure indicates that the Commission is the entity determining that the objectives of the closure plan have been met for purposes of the performance guarantee. It would be most appropriate to have the Commission make a recommendation to the Council for such a

		determination. It is also not clear in this diagram what “The Authority” refers to (i.e., Secretary General, Council, Assembly).
<i>Additional rows can be added to this table by selecting “Table” followed by “insert” and “rows below”</i>		

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