



## **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>Document reviewed</i>	
<b>Title of the draft being reviewed:</b>	<b>Draft standards and guidelines on the development and application of environmental management systems</b>
<i>Contact information</i>	
<b>Surname:</b>	Bosio
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**General Comments**

Italy well noted that the Commission recognized that these draft standards and guidelines were connected to a number of other environment-related standards and guidelines under development. However, an understanding of an environmental management strategy of the Authority is prerequisite for a correct assessment of the Contractor’s own Environmental Management System (EMS). These considerations also apply to the inspection mechanism, which is integral part of the Authority’s overall environmental management system. In this respect, Italy looks forward to considering a matrix of responsibility in environmental matters, which would address the respective roles and obligations of all the involved actors, including the LTC, the Council, Sponsoring States and Contractors. Overall, the draft standards and guidelines under review include indications on the approach that a Contractor shall have in the development of their own environmental management system. However, these draft standards and guidelines do not address specific issues arising with the application of the EMS in the Area and are very generic. It is expected that further guidance will be sought in draft standards and guidelines of the Environmental Impact Statement, the Environmental Management and Monitoring Plan and the Closure Plan in such a way to balance the lack of specificity of the Environmental Management System. Therefore, Italy is of the opinion that the assessing of the EMS draft cannot be performed with completeness in the absence of the above-mentioned documentation.

Furthermore, Annex I to the draft standards and guidelines, referred to as “standard”, does not set out the environmental objectives of the EMS as well as does not contain any specific mandatory requirements, criteria for assessment of compliancy or thresholds, exception made for the ISO standards.

Finally, it is not clear at which point of the Plan of Work approval process the EMS should be submitted to the Authority and who will be in charge of validating the EMS. It would not be acceptable to keep this document outside of the overall Plan of Work authorization procedure.

Finally, regulation 46 (b) mentions that an EMS implemented by a Contractor shall be: “Capable of cost-effective, independent auditing by recognized and accredited international or national organizations”. The guidelines for regulation 46 (Annex II) introduce the concept of third party audits but fail to regulating the mechanisms that trigger and implement external audits.

As a separate matter, the sub-paragraphs on Nonconformities at page 8 and ff. analyses the issue only from an internal perspective. It should be recalled that such non-compliance could also entail liability and, in specific circumstances, even the responsibility of the Sponsoring State.

**Specific Comments**

<b>Page</b>	<b>Line</b>	<b>Comment</b>
2	21	Letter c) introduces a new element if compared to Draft Regulation 46. As the ISO standards and guidance are updated over time, it would be convenient to clarify that they shall be taken into account as modified from time to time. Otherwise, they should be updated when regularly revising the standards and the guidelines.
2	20	Please add “c) ensure the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.” In accordance with article 145 b) of UNCLOS: as a matter of consistency references to UNCLOS obligations should be exact and consistent. c) and d) would then become d) and e).
2	31	Identification and understanding of the seabed mining operations impacts on the environment is the core part of the EIA process, where the environmental effects of any of the seabed mining activity are identified, quantified and assessed. Furthermore, EIA identifies and describes the

		<p>technical, design, and management measures to be adopted in order to avoid or minimize the environmental impacts associated to the mining operations. As part of the EIS, the EIA process is supposed to be conducted before, or at least in conjunction with the EMS preparation. So, as it is phrased today item (a) is confusing since it does not refer to the EIA/EIS process outcomes but it would instead produce an unclear duplication of the impact assessment process.</p> <p>It is recommended to rephrase item (a) to avoid conflicting indications.</p>
2	34	<p>All the seabed mining operations, as well as their operational sequence must be carefully described in the “Project description” section of the EIS. In fact, the Project description well details the functioning of the project technical equipment and the relevant operational aspects against which the environmental impacts potentially generated can be properly identified and assessed, along with effectiveness of the project mitigation measures considered in the project design stage. Item (b) suggests that such a key process is conducted at the EMS level, while it is a key component of the EIA process within the EIS framework.</p> <p>It is recommended to reconsider item (b).</p>
2	37	<p>The EMS shall also include the corrective action and management of changes of procedures in order to establish a clear path to respond quickly to non-compliance or environmental monitoring unpredicted negative data.</p>
4	99	<p>It is not clear the meaning of the “effective leadership” the Contractor management should perform. The Contractor’s high-level management shall ensure effective leadership capabilities through its environmental policy and the related organizational structure and chain of responsibility.</p> <p>It is recommended to reinforce the concept of effective leadership.</p>
6	177	<p>It is not clear which are the supposed national legal requirements the text refers to. National with respect to the Contractor’s nationality (in case of international holdings with headquarters located in States not coinciding with the Sponsoring State) or to the Sponsoring State?</p>
6	193	<p>The statement “...the Contractor should identify the current status of the seabed (e.g. physical, geological, biological, chemical, sediment properties) before starting any mining activities” is ambiguous because it is conflicting with the requirement of the EIA described the line below. Seabed baseline data must be available at the EIA process stage as well as for the EMS and for the relevant environmental planning purposes.</p> <p>It is recommended to delete the part of the sentence: “before starting any mining activity”.</p>
7	207-210	<p>Please replace with: The Exploitation Regulations provide that the Contractor shall take necessary measures to: prevent, reduce and control pollution and damage to the marine environment from its activities in the Area (see subsections IV.A Legal requirements, and IV.C Environmental impact assessment and statement).</p>
7	218	<p>Please delete ‘whenever possible’.</p>
7	247	<p>“environmental acceptance criteria” are not in line with the language used in the Draft regulations and should be defined by a standards perhaps in conjunction with other drafts standards and guidelines under development (EIS, EIA?).</p>

8	260	Generic statements such as: “It is important that if corrective actions are needed, they can be implemented swiftly and that the necessary equipment for this is in place” should be attached to standards that define what are corrective actions and the means, instruments and methodologies required to implement them. An effective Management of Change procedure must be established to ensure that the Corrective/Preventive actions are put in place in timely and effective manner.
8	263-264	An audit carried out by whom. Under regulation 46(b)? These guidelines should define the mechanism for an external audit process indicating when, who and how. What event or circumstances (except for incidents) trigger an audit, for example?
9	319	Please replace should with shall.
9	324-325	Provide and clarify which are the means to ensure that the criteria identified by the Contractor for their own environmental performance evaluation meet independently-established thresholds, criteria and methods. Paragraph 39 shall be considered incomplete in its current stage. The results of the monitoring and the Contractor evaluation shall be communicated to and validated by the Authority.
10	336	Define which ISA’s body receives the summarized results, define regular basis.
10	339	Please replace should with shall.
10	359	Please replace should with shall.
10	369-371	The EMS shall quantify the significance of the hazardous substances leaks and unauthorized mining discharges that activate the notification. The EMS should also specify the notification contents (e.g. description of the incidental event, quantities and nature of the leakage / release, measures taken to remove the cause and to minimize the environmental effects, including halting the mining operations, etc.). Finally, the time limit for the notification to the Authority (e.g. within 3 days from the event) should be established in the EMS as well.
11	394	Please remove “or bi-annual audit”
11	404	Please remove “or bi-annual audit”
all	all	Please revise the use of should instead of shall in all Annex II. The language used in these draft guidelines leaves wide margin of discretion regarding the implementation of the reporting and auditing systems, which need to be homogeneous across different exploitation contracts and should bind the Contractors to precise obligations, defining time and way of delivery of definite products.

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