



Stichting Deep Sea Conservation Coalition (DSCC) comments on the [draft standards and guidelines](#) prepared by the Legal and Technical Commission and the Secretariat of the International Seabed Authority (ISA)

15 October 2020

The ISA has issued three sets of draft guidelines and standards for deep-sea mining for public comment. These are the 'Draft guideline on the preparation and assessment of an application for the approval of a Plan of Work for exploitation'; the 'Draft standard and guidelines on the development and application of environmental management systems'; and the 'Draft standard and guidelines on the form and calculation of an environmental performance guarantee'.

General Comments

In the DSCC's view, these are premature for two reasons.

The first reason is that before the standards and guidelines can be negotiated and adopted, the member States of the ISA must agree to a fundamental approach to the protection of the environment to guide the development of any standards and guidelines, as well as environmental regulations.

First amongst these is to adopt a clear requirement that biodiversity loss should not be permitted. The UN Biodiversity Summit in September 2020 highlighted the urgent threat facing our planet and our societies from the loss of biodiversity. Almost 80 heads of State have signed the [Leaders Pledge for Nature](#) to Reverse Biodiversity Loss by 2030 for Sustainable Development and to mainstream this commitment into extractive industries. Most of the Heads of State which signed the pledge are from countries that are members of the International Seabed Authority. The Leaders Pledge echoes the commitments made by all world leaders at the United Nations Conference on Sustainable Development (Rio+20 Summit) in 2012 in the outcome document - The Future We Want - which called for "urgent actions that effectively reduce the rate of, halt and reverse the loss of biodiversity."

Secondly, the standards and guidelines, as well as the regulations under negotiation by the ISA, must align with the Sustainable Development Goals (SDGs), including, in particular, SDG 14 and its Target 14.2 to "by 2020, sustainably manage, and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience and take action for their restoration, to achieve healthy and productive oceans." States should ensure that the ISA standards, guidelines and regulations should not permit deep-sea mining unless significant adverse impacts on marine ecosystems; degradation of the resilience of marine ecosystems; and impacts from which recovery will be difficult or impossible over meaningful timeframes can all be prevented.

Third, in support of the first two points above, any standards and guidelines, as well as the regulations themselves, should require a comprehensive catalogue and assessment of the species and ecosystems, their characteristics and dynamics, and the ecosystem services such species and ecosystems provide, in both benthic and pelagic areas potentially impacted by deep-sea mining. This should be a basic

requirement of the ISA regulations, including environmental impact assessment requirements and regional environment management plans, and any associated standards and guidelines. We do not agree, for example, that ‘adaptive management’ is an appropriate means of managing the risks of large-scale, long-term and irreversible damage to marine ecosystems, loss of biodiversity and loss of ecosystem services, much less the risk of extinction before species have even been discovered, as a result of, or to compensate for, lack of scientific information or ignorance.

The second principal reason the standards and guidelines are premature is that critically, the standards and guidelines cannot be developed before the exploitation regulations are finalized. This is very clear from the three documents under review. To cite one clear example, the current draft Regulation 26, the Environmental Performance Guarantee, so far only applies to mine closure, so has no applicability during the entire period of actual mining. The draft standard and guideline follows the current draft text of Regulation 26, as is to be expected. As a result, the draft standard and guideline would only apply to mine closures, perpetuating the gap.

The Deep Sea Conservation Coalition has highlighted a number of additional issues of concern regarding the potential impacts of deep-sea mining as well as structural and operational concerns in regard to the ISA as a regulatory body. These can be found on the website of the DSCC at www.savethehighseas.org

Below in the templates provided for comments to the ISA are specific comments on provisions of the draft standards and guidelines.

Specific Comments

Three draft Standards and Guidelines have been issued by the ISA for [consultation](#), regarding [Environmental Management Systems](#), [Environmental Performance Guarantee](#) and [Plan of Work](#). ISA [emphasize](#) that these documents are unedited drafts provided for review and not for citation or other uses. These are comments made primarily to illustrate that there are significant difficulties with each one of the drafts: primarily as the development of Standards and Guidelines are premature, since the draft Regulations are nowhere near complete.

TEMPLATE FOR COMMENTS

<i>Document reviewed</i>	
Title of the draft being reviewed:	Environmental Performance Guarantee
<i>Contact information</i>	
Surname:	Owen
Given Name:	Sian
Government (if applicable):	
Organization (if applicable):	Deep Sea Conservation Coalition

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General Comments

1. DSCC has already [commented](#) that in the Draft Regulation relating to an Environmental Performance Guarantee (EPG), Draft Regulation 26, the list of potential costs covered by guarantee is far too narrow, exclusively addressing closure issues. The Guarantee should also apply to environmental costs incurred during mining operations, and the list in DR 26(2) should reflect this. [Australia](#) made a similar observation.
2. The EPG Standard and Guideline bears out DSCC’s concerns. It is limited to (a) the premature closure of exploitation activities; (b) the decommissioning and final closure of exploitation activities, including the removal of any Installations and equipment; and (c) the post-closure monitoring and management of residual environmental effects. It thus has no relevance at all to mining operations during the (e.g. 30 year plus any extension) mining contract.
3. Worse, it is noted that “The Commission considered that a balanced approach should be taken between environmental concerns and the need to ensure the development of activities in the Area. Such balance includes: 1) ensuring that the form and amount of the environmental performance guarantee do not hinder the ability of contractors to participate in activities in the Area; and 2) ensuring that the Authority has the full amounts required to cover the costs of the events identified in the scope of Draft regulation 26.”
4. There is no basis in UNCLOS for such an approach, which is antithetical to and compromises environmental protection. A ‘balanced approach’ between environmental protection and the development of mining is inconsistent with UNCLOS. Article 145 of UNCLOS provides that: “Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities.” That is not qualified by any ‘balance’ of mining development. Likewise, for human life, the governing provision is Article 146, which provides that “necessary measures shall be taken to ensure effective protection of human life.” Again, there is no balance of human lives against mining. A performance guarantee must be sufficient, together with other measures, to satisfy these obligations.
5. Thirdly, one of the options offered is a “self-guarantee” or company guarantee. Such a guarantee is really no guarantee at all: the contractor would be guaranteeing itself. A self-guarantee or company guarantee is insufficient wherever insolvency or corporate
6. gamesmanship to insulate against liabilities is a possibility, as it is with any private entity. Therefore, this option should be taken off the table and not considered further.

Specific Comments

Page	Line	Comment
13	369-375	A “self-guarantee” or company guarantee is no guarantee at all. The contractor would be guaranteeing itself. A self-guarantee or company guarantee is insufficient wherever insolvency or corporate gamesmanship to insulate against liabilities is a possibility, as it is

	with any private entity. Therefore, this option should be taken off the table and not considered further.
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TEMPLATE FOR COMMENTS

<i>Document reviewed</i>	
Title of the draft being reviewed:	Environmental Management Systems
<i>Contact information</i>	
Surname:	Owen
Given Name:	Sian
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Organization (if applicable):	Deep Sea Conservation Coalition
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<i>General Comments</i>	
<p>The draft Environmental Management System (EMS) Standard and Guideline lacks a procedure for approval or oversight by the ISA. In addition, it lacks a process for communication with stakeholders and taking their comments into account.</p> <p>At present, it reads that “The Contractor should establish suitable mitigating measures to reduce the environmental effects to a level that is as low as reasonably practicable.” Instead, wording consistent with UNCLOS could read “The Contractor should ensure effective protection for the marine environment through measures that will prevent significant adverse impacts including from cumulative effects.” Just as there is no ‘balance’ against environmental protection, there is no qualification of measures being ‘reasonably practicable’.</p> <p>This draft EMS would only require baseline data on the seabed, omitting the water column entirely. Baseline data for water column parameters must be included.</p> <p>The EMS draft has highlighted another deficiency in the draft Regulations which concerns the notification of incidents. Currently, the draft Regulations require only notification of listed events (Appendix I). There is no provision covering general breaches of ISA rules and regulations, such as an exceedance of the thresholds set in the Environmental Management and Monitoring Plan: an incident or occurrence would have to fit narrow and specific criteria such as “10. Adverse environmental conditions with likely significant safety and/or</p>	

environmental consequences” or “14. Impairment/damage to safety or environmentally critical equipment” to be notifiable.		
<i>Specific Comments</i>		
Page	Line	Comment
7	Line 215 V.A.24	<p>At present, the standard reads that “The Contractor should establish suitable mitigating measures to reduce the environmental effects to a level that is as low as reasonably practicable.” The Article 145 requirement is to “ensure effective protection for the marine environment from harmful effects which may arise from such activities”</p> <p>Instead, wording consistent with UNCLOS should be used: this could read “The Contractor should ensure effective protection for the marine environment through measures that will prevent significant adverse impacts including from cumulative effects.”</p> <p>Just as there is no ‘balance’ against environmental protection, there is no qualification of measures being ‘reasonably practicable’.</p>

TEMPLATE FOR COMMENTS

<i>Document reviewed</i>	
Title of the draft being reviewed:	Guideline on the preparation and assessment of an application for the approval of a Plan of Work for exploitation
<i>Contact information</i>	
Surname:	Owen
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<i>General Comments</i>	

1. The Plan of Work determines the activities contractors will undertake as part of a contract for exploitation. In essence the Standard and Guideline document is a checklist for contractors. Yet as the Guideline is focussed on 'the approval of a Plan of Work for exploitation' added, the (quite obvious) possibility that a Plan of Work may in fact be rejected by the ISA is not addressed. Equally egregiously, the document omits entirely to reference the applicant's financial and technical competence: a key issue under the Regulations.
2. As an overall comment, this template is premature, as the draft Exploitation Regulations (including Annex I to that draft, which sets out information for applicants to send to the ISA) are far from complete. Even a checklist such as the one proposed here will necessarily be incomplete for that reason and should not be considered further.
- 3.

Specific Comments

Page	Line	Comment
		none

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