

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL - PART I

Informal Working Group – Environment

(for inclusion in the IWG-ENV consultations, due 15 April 2022)

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@isa.org.jm.

1. Name(s) of Delegation(s) making the proposal:

Advisory Committee on Protection of the Sea

2. Please indicate the relevant provision to which the textual proposal refers.

ANNEX IV – Environmental Impact Statement – Template – Executive Summary (d)

Kindly provide the proposed amendments to the regulation in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

DELETE from current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) EIS –
Template – Executive Summary (d)

~~Mitigation~~ measures to minimize environmental impacts

ADD to current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) EIS –Template –
Executive Summary (d)

Prevention, reduction and control measures to minimize environmental impacts

3. Please indicate the rationale for the proposal. [150 word limit]

The LOSC requires ‘prevention, reduction and control,’ in that order, as set out in, e.g., LOSC Article 145. The Closure Plan must cover at least all the required actions. As explained in detail in ACOPS Proposal IWG ENV PartIV DR45(c), ‘mitigate’ appears only once in the LOSC, in Article 142(3), in relation to coastal state rights under specifically defined circumstances. Please refer to that Proposal. In short: the use of ‘mitigate’ here, and everywhere else it appears in these draft regulations, is incompatible with the LOSC, fails to adequately protect the marine environment as the LOSC requires, and makes the regulations vulnerable to legal challenge. It must be replaced throughout (not all occurrences are identified in our comments) with ‘prevent, reduce and control’ (or grammatically correct variants thereof).

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ANNEX IV – Environmental Impact Statement – Template - section 3: description of the proposed development

Kindly provide the proposed amendments to the regulation in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

ADD to current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template - Section 3

“... the Environmental Impact Statement should focus on those activities occurring within the Authority’s jurisdiction (e.g., activities related to the recovery of the minerals from the Area up to the point of trans-shipment), bearing in mind that the environmental effects of those activities may extend far beyond the Area, including the coastline, and if they do, these effects must therefore also be addressed in the [EIS].

3. Please indicate the rationale for the proposal. [150 word limit]

LOSC Article 145 does not limit the Authority’s jurisdiction over the environmental effects of activities in the Area to the Area.

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ANNEX IV – Environmental Impact Statement – Template – section 4. Description of the existing physicochemical environment

Kindly provide the proposed amendments to the regulation in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

DELETE from current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV - EIS-Template - Section 4 - Title:

Description of the existing ~~physicochemical~~ environment

REPLACE current proposed text with: [oceanographic](#)

****Note the table of contents for the EIS template and for section 7 will need to be amended accordingly****

DELETE from current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV - EIS-Template - Section 4

“Describe the site, including the ~~geological and~~ oceanographic setting...”

REPLACE current proposed text with:

... “oceanographic ([e.g., its geological, chemical, physical, and biological characteristics](#)) setting”

3. Please indicate the rationale for the proposal. [150 word limit]

The title of this section is too limited and does not reflect the scope of what is required to be covered to adequately characterize the site.

Use of “geological” is incorrect in that it is too limited. Geology, chemistry, and geochemistry are three different scientific disciplines. Note that biogeochemistry is a fourth formally recognized scientific discipline, all with their marine/oceanographic counterparts, to which must be added the equally essential scientific discipline of physical oceanography.

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2. Please indicate the relevant provision to which the textual proposal refers.

ANNEX IV – Environmental Impact Statement – Template – section 5.4 – Biological environment

Kindly provide the proposed amendments to the regulation in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

ADD to current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template - Section 5.4 – Biological environment: after the last current proposed paragraph (“The description ...occurs.”). **New paragraph:**

The description must set out in detail the current “ecological balance of the marine environment” and how and the extent to which the proposed activities may (potentially and actually) “interfere” with this ecological balance.

3. Please indicate the rationale for the proposal. [150 word limit]

The rationale for adding “interference ... the marine environment” is set out in ACOPS Template Proposal IWG ENV PartIV Overarching Comments. Please refer to that template. In short, it is specifically required by LOSC 145 (a). Failure to address this criterion would be incompatible with the LOSC because the full scope of its environmental provisions would remain unimplemented as required and render the regulations vulnerable to legal challenge.

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Advisory Committee on Protection of the Sea

2. Please indicate the relevant provision to which the textual proposal refers.

ANNEX IV – Environmental Impact Statement – Template – section 5.5 – Summary of the existing biological environment

Kindly provide the proposed amendments to the regulation in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

ADD to current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template - Section 5.5 – Summary of the existing biological environment: after the last current proposed paragraph (“Summarize ... length”). **New paragraph:**

The summary must set out in detail the current “ecological balance of the marine environment” and describe how and the extent to which the proposed activities may “interfere” with this ecological balance.

3. Please indicate the rationale for the proposal. [150 word limit]

The rationale for adding “interference the marine environment” is set out in ACOPS Template Proposal IWG ENV PartIV Overarching Comments. Please refer to that template. In short, it is specifically required by LOSC 145 (a). Failure to address this criterion would be incompatible with the LOSC because the full scope of its environmental provisions would remain unimplemented as required and render the regulations vulnerable to legal challenge.

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1. Name(s) of Delegation(s) making the proposal:

Advisory Committee on Protection of the Sea

2. Please indicate the relevant provision to which the textual proposal refers.

ANNEX IV – Environmental Impact Statement – Template – section 7 – Assessment of impacts on the physicochemical environment and proposed Mitigation

Kindly provide the proposed amendments to the regulation in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

DELETE from current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template – Section 7: Title

Assessment of impacts on the ~~physicochemical~~ environment and proposed ~~Mitigation~~

REPLACE current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template – Section 7: Title with:

Assessment of impacts on the oceanographic environment and proposed prevention, reduction and control measures

Please indicate the rationale for the proposal. [150 word limit]

The rationale for replacing ‘physicochemical’ with ‘oceanographic’ is set out in ACOPS Proposal IWG ENV AnnexIV EIS Template Section4 and ‘mitigation’ with ‘prevent, reduce and control’ is set out in ACOPS Proposal IWG ENV PartIV DR 45c. Please refer to those templates.

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1. Name(s) of Delegation(s) making the proposal:

Advisory Committee on Protection of the Sea

2. Please indicate the relevant provision to which the textual proposal refers.

ANNEX IV – Environmental Impact Statement – Template – section 7- – Assessment of impacts on the physicochemical environment and proposed Mitigation (b)

Kindly provide the proposed amendments to the regulation in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

DELETE from current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template – Section 7 (b)

(b) Measures that will be taken to ~~avoid, remedy or mitigate~~ such impacts;

REPLACE current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template – Section 7(b) with:

(b) Measures that will be taken to prevent, reduce, control and, where appropriate and feasible, avoid and remedy such impacts;

NOTE that “mitigate” will need to be removed and the correct LOSC wording inserted throughout this section. “Physicochemical” in the title will need to be changed as per ACOPS Proposal IWG ENV AnnexIV EIS Template Section4 and ACOPS...Section7.

Please indicate the rationale for the proposal. [150 word limit]

The rationale for replacing the current proposed text is set out in ACOPS Proposal IWG ENV PartIV DR45c and DR55 para1. Please refer to those templates. ‘Avoid’ and ‘prevent’ are not synonymous, and adding ‘avoid’ here could be useful, and is not inconsistent with the LOSC

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ANNEX IV – Environmental Impact Statement – Template – section 8.7 – Cumulative impacts

Kindly provide the proposed amendments to the regulation in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

ADD to current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template – Section 8.7

“...This should include an evaluation of the spatial and temporal intensity of mining and its effects on other impacts, as well as an evaluation of the nature and spatial and temporal extent of any potential and actual interference with the ecological balance of the marine environment.

Please indicate the rationale for the proposal. [150 word limit]

The rationale for adding the current proposed text is set out in detail in ACOPS Template Proposal IWG ENV PartIV Overarching Comments. Please refer to that template. In short, consideration of the ecological balance of the marine environment and interference therewith, as well as prevention, reduction and control of such interference, is specifically required by LOSC 145 (a).

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ANNEX IV – Environmental Impact Statement – Template – section 8 – Assessment of impacts on the biological environment and proposed Mitigation

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DELETE from current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template – Section 8 Title

“... and proposed ~~Mitigation~~”

REPLACE current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template – Section 8 Title with:

“... and proposed [prevention, reduction and control measures](#)”

NOTE that “mitigate” will need to be removed and the correct LOSC wording inserted throughout this section 8.

Please indicate the rationale for the proposal. [150 word limit]

As explained in detail in ACOPS Proposal IWG ENV PartIV DR45(c), ‘mitigate’ appears only once in the LOSC, in Article 142(3), in relation to coastal state rights under specifically defined circumstances. Please refer to that Proposal. In short: the use of ‘mitigate’ here, and everywhere else it appears in these draft regulations, is incompatible with the LOSC, fails to adequately protect the marine environment as the LOSC requires, and makes the regulations vulnerable to legal challenge. It must be replaced throughout (not all occurrences are identified in our comments) with ‘prevent, reduce and control’ (or grammatically correct variants thereof).

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2. Please indicate the relevant provision to which the textual proposal refers.

ANNEX IV – Environmental Impact Statement – Template – section 9 – Assessment of impacts on the socioeconomic environment and proposed Mitigation

Kindly provide the proposed amendments to the regulation in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

DELETE from current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template – Section 9 Title

“... and proposed ~~Mitigation~~”

REPLACE current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) ANNEX IV -EIS-Template – Section 9 Title with:

“... and proposed [prevention, reduction and control measures](#)”

NOTE that “mitigate” will need to be removed and the correct LOSC wording inserted throughout this section 9.

Please indicate the rationale for the proposal. [150 word limit]

As explained in detail in ACOPS_Proposal_IWG_ENV_PartIV_DR45(c), ‘mitigate’ appears only once in the LOSC, in Article 142(3), in relation to coastal state rights under specifically defined circumstances. Please refer to that Proposal.

In short: the use of ‘mitigate’ here, and everywhere else it appears in these draft regulations, is incompatible with the LOSC, fails to adequately protect the marine environment as the LOSC requires, and makes the regulations vulnerable to legal challenge. It must be replaced throughout (not all occurrences are identified in our comments) with ‘prevent, reduce and control’ (or grammatically correct variants thereof).