

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

Informal Working Group – Inspection, Compliance and Enforcement

(for inclusion in the IWG-ICE consultations, due 22 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.

3. **Part XI - Draft Regulation 104 Power to take remedial action - para 1**

4. 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.

CHANGE current proposed text in ISBA/25/C/WP.1 (2019) DR 104 para 1 as follows:

Regulation 104

Power to take remedial action

1. Where a Contractor fails to take action required under regulation 103, the Authority may carry out any remedial works ~~or~~ **and** take such **other** measures as it considers reasonably necessary to prevent, **reduce and control** ~~or Mitigate~~ the effects or potential effects of a Contractor’s failure to comply with the terms and conditions of an exploitation contract.

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

As per ACOPS Proposal IWG ENV PartIV DR45(c), ‘mitigate’ appears once in the LOSC - Article 142(3) - relating to coastal state rights under specifically defined circumstances.

Everywhere else (at least 50 times) the LOSC requires environmental measures to prevent, reduce *and* control (note ‘and’, NOT ‘or’).

‘Mitigate’ is not synonymous with ‘prevent, reduce and control’. ‘Mitigate’ is far weaker. It *cannot* be used as a substitute for the superior (priority) and more rigorous legal requirements of “prevent, reduce, and control”.

The use of ‘mitigate’ 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 *only* be used, if at all, and then only with caution, under the circumstances of LOSC 142.