

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

*Informal Working Group – Institutional Matters*

**(for inclusion in the IWG-Institutional Matters (IM) consultations, due 29 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](mailto: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.

**Draft Regulation 2: Fundamental Policies and Principles – (e)**

3. 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 2(e) as follows:**

(e) Provide, pursuant to article 145 of the Convention, for the effective protection for the Marine Environment from the harmful effects that may arise from Exploitation **and related activities**, in accordance with the Authority’s environmental policy, including regional environmental management plans, based on the following principles:

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

**As per ACOPS Proposal IWG ENV PartIV DR44para1, although “activities” would be sufficient here and adding “exploitation” here is unnecessary, the proposed addition of “and related activities” helps avoid potential confusion on the type and scope of the activities being addressed and helps reduce the possibility of the term “exploitation” being interpreted restrictively, thereby risking excluding activities that might harm the marine environment. Such an exclusion 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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**Draft Regulation 2: Fundamental Policies and Principles – (e)(i)**

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**CHANGE current proposed text in ISBA/25/C/WP.1 (2019) DR 2(e)(i) as follows:**

(i) A fundamental consideration for the development of environmental objectives shall be the effective protection for the Marine Environment, including its ecological balance, biological diversity and ecological integrity;

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

As per ACOPS Proposal IWG INSTITUTIONAL MATTERS Overarching Comments, environmental protection measures required by LOSC Article 145 are not limited to prevention, reduction and control of pollution and other hazards. Prevention, reduction and control of interference with the ecological balance of the marine environment require their own specific measures. Ecological balance is an environmental quality criterion specifically required to be addressed in LOSC Article 145 and ISA Strategic Direction 3.4 and must therefore be listed here, for further specific action in the regulations, standards and guidelines. Given its specific reference and mandate in the LOSC, it must also precede other elements not mentioned in the LOSC. 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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**Draft Regulation 2: Fundamental Policies and Principles – (f)**

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**4. CHANGE current proposed text in ISBA/25/C/WP.1 (2019) DR 2(f) as follows:**

(f) Provide for the prevention, reduction and control of pollution and other hazards to the Marine Environment, including the coastline, and of interference with the ecological balance of the marine environment;

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

Further to our detailed submissions to IWG-Environment, reiterated in ACOPS Proposal IWG IM Overarching Comments, re the requirement to address “interference with the ecological balance of the marine environment” in the regulations, this criterion - explicitly required by Article 145 - must be included here, in the same place as it appears in the LOSC itself, namely right after the current text reprised in (f).

ACOPS sees no reason to include a required environmental criterion from Article 145 and omit another required environmental criterion immediately following it in the Convention, which criterion is equally required to be addressed in the exploitation regulations under the LOS Convention.

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.**

**Draft Regulation 2: Fundamental Policies and Principles – (h)**

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**4. CHANGE current proposed text in ISBA/25/C/WP.1 (2019) DR 2(h) as follows:**

(h) Ensure, by the effective management and regulation of the Area and its Resources the development of the common heritage for the benefit of mankind as a whole;

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

This appears to try to reprise the Art. 150(i) requirement (“ensuring ... the development of the common heritage for the benefit of mankind as a whole”). “Promote” does not appear in relation to this requirement in the LOSC. **The precise LOSC text must be used.** Legally binding documents (e.g., the LOSC/IA) must not be paraphrased in their implementing instruments (e.g., exploitation regulations). **Paraphrasing will not operate to change the text or the meaning of the governing instrument.** It is the governing instrument that will prevail if the text of the implementing instrument is submitted to judicial or arbitral scrutiny. The current version weakens the LOSC’s requirement, is therefore incompatible with the LOSC, and makes the regulations vulnerable to legal challenge.