

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 4 Protection measures in respect of coastal States – para 2**

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 4 para 2 as follows:**

2. Contractors shall take all measures necessary to ensure that their activities are conducted so as not to cause harmful effects or Serious Harm ~~to the Marine Environment~~, including, but not restricted to, pollution, other hazards and the ecological balance, to the Marine Environment under the jurisdiction or sovereignty of coastal States, and that any such harmful effects or Serious Harm ~~or pollution~~ arising from Incidents in its Contract Area does not spread into areas under the jurisdiction or sovereignty of a coastal State.

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

The LOSC does not limit the contractor’s marine environmental protection obligations to serious harm. Any harmful effect on the marine environment demonstrated under LOSC criteria (including those that may arise) must trigger action by contractors to prevent, reduce and control such effect(s). Serious harm must be shown to trigger an emergency order or to “disapprove areas for exploitation” (Article 162 (2)(w), (x) by the Authority, with additional evidence not reprised here). Crucial here is that limiting the contractor’s obligations to cases of serious harm is inconsistent with the LOSC’s own requirements and risks excluding activities that may cause harmful effects without causing serious harm. Such a limitation 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.

**Draft Regulation 4 Protection measures in respect of coastal States – para 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 4 para 3 as follows:**

3. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor is likely to cause [harmful effects or Serious Harm](#) or a threat of [harmful effects or Serious Harm](#) to its coastline or to the Marine Environment under its jurisdiction ...

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

The LOSC does not limit the coastal State’s marine environmental protection obligations, or the Authority’s, to serious harm. Any actual or potential harmful effect on the marine environment demonstrated under LOSC criteria *must* trigger action by the coastal State as set out in, e.g., LOSC Art. 142. The Authority must also act. Crucial here is that limiting the coastal State’s and the Authority’s obligations to act to cases of actual or potential serious harm is inconsistent with the LOSC’s own requirements and risks excluding activities that may cause harmful effects without causing serious harm. Such a limitation 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.

**Regulation 4 Protection measures in respect of coastal States – para 4**

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 4 para 4 as follows:**

4. If the Commission determines, taking account of the relevant Guidelines, that there are clear grounds for believing that Serious Harm or harmful effects to the Marine Environment ~~is~~ are likely to occur, it shall recommend that the Council issue an emergency order pursuant to article 165(2)(k) of the Convention in the case of Serious Harm, and take necessary measures to prevent, reduce and control harmful effects.

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

The LOSC does not limit the Authority’s marine environmental protection obligations to serious harm. Any actual or potential harmful effect on the marine environment demonstrated under LOSC criteria must trigger action by the Authority. Limiting the Authority’s obligations to act to cases of actual or potential serious harm is inconsistent with the LOSC’s own requirements and risks excluding activities that may cause harmful effects without causing serious harm. Such a limitation 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 4 Protection measures in respect of coastal States – para 5**

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 4 para 5 as follows:**

5. If the Commission determines that the Serious Harm or harmful effects or threat of Serious Harm or of harmful effects to the Marine Environment, which ~~is~~ are likely to occur or ~~have~~ has occurred, ~~is~~ are attributable to the breach by the Contractor of the terms and conditions of its exploitation contract, the Secretary-General shall take all necessary measures, including to issue a compliance notice pursuant to regulation 103, ~~or~~ and direct an inspection of the Contractor’s activities pursuant to article 165 (2) (m) and part XI of these Regulations.

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

**The LOSC does not limit the Authority’s marine environmental protection obligations to serious harm. Any actual or potential harmful effect on the marine environment demonstrated under LOSC criteria *must* trigger action by the Authority. Limiting the Authority’s obligations to act to cases of actual or potential serious harm is inconsistent with the LOSC’s own requirements and risks excluding activities that may cause harmful effects without causing serious harm. Such a limitation 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.**