

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.

Draft Regulation 44: General Obligations Paragraph 1

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.

DELETE from current proposed text in ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) DR 44 para 1: ...

... from harmful effects which may arise from “Exploitation in the Area or from shipboard processing immediately above a mine site of minerals derived from that mine site,” ...

REINSTATE the exact original LOS CONVENTION (LOSC) text from Article 145:

... such activities,” ...

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

The proposed additional text which ACOPS considers must be deleted is incompatible with the LOSC in that it restricts the activities to which the Regulations are to apply. The LOSC comprehensively defines “activities in the Area” in Part I Article 1 1.(3) ‘Use of Terms and Scope’ as “all activities of exploration for, and exploitation of, the resources of the Area;” (emphasis supplied). The proposed additional text to which ACOPS objects here is therefore not only unnecessary, it is also incompatible with the LOSC, rendering the regulations vulnerable to legal challenge as well.

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Draft Regulation 44: General Obligations paragraph 1(b)

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ADD to current proposed text of ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) DR 44 para 1(b):

(b) In taking all necessary measures to ensure that the Contractor carries out Exploitation **and related activities** in the Area in conformity with

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 44: General Obligations paragraph 1(c)

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ADD to current proposed text of ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) DR 44 para 1(c):

(c) In taking all necessary measures to to prevent, reduce and control pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment arising from Exploitation and related activities in the Area in conformity with

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

As per ACOPS IWG ENV Overarching Comments, the 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. Please refer to ACOPS IWG ENV Overarching Comments for further detail.

As per our comment in ACOPS Proposal IWG ENV PartIV DR44 para1 and 1b, 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. 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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Advisory Committee on Protection of the Sea

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

Draft Regulation 44: General Obligations paragraph 2

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.

ADD to current proposed text of ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) DR 44 para 2:

2. In adopting laws and regulations, in accordance with the Convention, to prevent, reduce and control pollution of the marine environment from Exploitation **and related activities** in the Area

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

As per our comment in ACOPS Proposal IWG ENV PartIV DR44 para1b, 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. Such an interpretation 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.
