

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27<sup>TH</sup> 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](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 45: Development of environmental Standards (a)**

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 45 (a):**

(a) Environmental quality objectives, including on [ecological balance of the marine environment](#), biodiversity status, plume density and extent, and sedimentation rates;

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

**As per ACOPS Proposal 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. Ecological balance is an environmental quality criterion specifically required to be addressed in LOSC Article 145 and must therefore be listed here, for further specific action in the regulations, standards and guidelines. 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 45: Development of environmental Standards (c)**

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**DELETE** from current proposed text of ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) DR 45 (c):

~~**(c) Mitigation measures.**~~

**REPLACE with**

**(c) Prevention, reduction and control measures**

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

‘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 a far weaker term. It cannot be used as a substitute for, but only in addition to the superior (priority) legal requirements of “prevent, reduce, and control”.

The use of ‘mitigate’ 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). It can only be used, with caution, under the circumstances of LOSC 142.

