

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 50 para 2 Restriction on Mining Discharges

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 ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) DR 50 para 2

“ ... to monitor ~~and mitigate~~ its impacts, ...”

REPLACE “ ~~and mitigate~~” in current proposed text DR 50 para 2 with:

“... **prevent, reduce and control** ...”

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

As explained in detail in ACOPS Proposal IWG ENV PartIV DR45(c), ‘mitigate’ appears only once in the LOSC, in Article 142(3), in relation to coastal state rights under specifically defined circumstances. Please refer to that Proposal.

In short: the use of ‘mitigate’ here, and everywhere else it appears 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 thereof).

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Draft Regulation 50 para 4 Restriction on Mining Discharges

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Comment in support of current proposed text ISBA/27/C/IWG/ENV/CRP.1 (8 Feb 2022) DR 50 para 4 and specifically in support of the use of the phrase ‘consistent with’

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

The rationale in the comment for removing “not undermining” and its replacement by “consistent with” is correct in international law. “Not undermining” has no recognized legal pedigree (i.e., it is unknown in the relevant courts, tribunals, authoritative scholarly publications on international law, and – to the best of ACOPS’s knowledge – any international treaties, and it has not been judicially defined or interpreted). It does not appear in the LOSC or the Implementing Agreement.

By contrast, “consistent with” enjoys a long and well-recognized legal pedigree, is common in international treaties, appears at least 16 times in the LOSC (its counterpart “inconsistent with” appears at least thrice), and therefore is the formulation supported by ACOPS.

Before introducing new language, it is necessary to check whether the LOSC already has the language for the issue. Any new proposed language must come with a proposed definition.