

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH 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.

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.

Overarching Submission with regard to the Draft Regulations to be addressed by the Institutional Matters (IM) Working Group (WG)

3. Kindly provide the proposed amendments to the regulation or standard or guideline 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.

The Exploitation Regulations ought to provide at least the same standard of marine environmental protection as the Exploration Regulations do (noting the continuing scope for improvement with the latter), because exploitation is considered to present more risks of harm to the marine environment than exploration.

As originally submitted in writing to and voiced in plenary on 28 March 2022, and further expanded in its submission on 15 April 2022 to the current (April) round of the IWG-ENV consultations, ACOPS here reiterates its concern that the current draft exploitation regulations and the comments thereon submitted before and during all the discussions in the Informal Working Group at the March 2022 session of the Council, do not include any “appropriate rules, regulations and procedures” for the “prevention, reduction and control of interference with the ecological balance of the marine environment,” which is specifically required in Law of the Sea Convention (LOSC) Article 145 as part of the “necessary measures [that] shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection of the marine environment from harmful effects which may arise from such activities.” This requirement is highlighted in ISA Strategic Direction 3.4.

The conceptual construction of Article 145 in its entirety, the textual differentiation between ‘pollution’ and ‘other hazards’, inclusion of the coastline, in addition to the specific mandate related to the ecological balance, are among many provisions of the LOSC that clearly demonstrate that the intended protection of the marine environment goes beyond harmful effects from direct sources of pollution. See also, e.g., the South China Sea 2016 Award, holding that LOSC Article 194 and Part XII are not limited to sources of pollution.

In Part XI, the LOSC adopts the ‘ecological balance’ concept to frame all harmful effects from all sources on the marine environment that may arise from activities in the Area. As an uncontested part of the LOSC text since its development in the 1970s, the ‘ecological balance’ criterion embodies and requires an “ecosystem approach” and attention to “biodiversity” long before these latter phrases came into common use. The Proelss commentary on Art. 145 remarks that “A common definition for an ‘ecological balance’ refers to ‘a state of dynamic equilibrium within a community of organisms in which genetic, species and ecosystem diversity remain relatively stable, subject to gradual changes through natural succession’.”

“Necessary measures” may include, *inter alia*:

- Defining “interference” and “ecological balance”
- The information needed to establish a baseline “balance” against which any potential interference must be measured
- Rules, regulations, procedures, standards and guidelines to “prevent, reduce and control” this interference.

This will also require consideration of the current draft regulations, standards and guidelines with regard to, *inter alia*:

- The ecosystem approach
- Biodiversity
- Environmental impact assessment
- Cumulative impacts
- Residual effects
- Monitoring
- The geographical boundaries for assessing an activity in the Area, including REMPS.

As promised in its 28 March intervention, ACOPS herewith resubmits these overarching views with further detail, and submits textual proposals on the incorporation of this hitherto overlooked requirement in the relevant draft regulations and relevant annexes, in the current (April 2022) round of comments thereon. ACOPS looks forward to the thoughts of other delegations on this matter.

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

Environmental concepts developed since the LOSC was adopted in 1982 and that complement its objectives have been brought into the current draft exploitation regulations, as provided for elsewhere in the LOSC, but these concepts do not and cannot, legally or scientifically, supersede or substitute for the “interference with the ecological balance” criterion.

The “interference with the ecological balance” criterion must be considered in its own right and the “necessary measures” developed accordingly.

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.