

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27<sup>TH</sup> SESSION:  
COUNCIL - PART II

*Informal Working Group - Environment*

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:**

ITALY

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

DR 46 bis

**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.**

1. An applicant or Contractor, as the case may be, shall carry out an environmental impact assessment ~~process on~~<sup>of</sup> the potential effects on the ~~m~~Marine environment of the proposed ~~Exploitation mining operation~~—in accordance with ~~the Rules of the Authority these regulations~~—and the applicable Standard and ~~taking into account the relevant Guidelines~~ as well as Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.

~~1bis In the conduct of the environmental impact assessment, the Sponsoring State and Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose jurisdiction resource deposits in the Area lie, with a view to avoiding infringement of their rights and interests, in accordance with Regulation 4.~~

2. The environmental impact assessment ~~process~~ shall include ~~the following steps~~:

(a) ~~A~~ ~~S~~scoping ~~process~~ to identify and prioritize the main activities and potential impacts associated with the proposed mining operation, ~~which are relevant to the assessment, and alternatives – including the no-action option – that Mitigate Environmental effects as well as to identify and engage with Stakeholders,~~ in order to focus the Environmental Impact Statement on the key environmental issues.

(b) ~~An Environmental I~~mpact assessment and evaluation ~~process~~ to describe and predict the nature and extent of the Environmental Effects of the mining operation, including cumulative impacts and residual effects using Best Available Scientific Evidence, ~~Best Environmental Practices, Best Available Techniques, and Good Industry Practice and taking into account, where applicable:~~

~~[(i) The intensity or severity of the impact at the specific site being affected;~~

~~[(ii) The spatial extent of the impact relative to the availability of the habitat type affected;~~

~~[(iii) The sensitivity/vulnerability of the ecosystem to the impact;~~

~~[(iv) The ability of an ecosystem to recover from harm, and the rate of such recovery;~~

~~[(v) The extent to which ecosystem functions may be altered by the impact; and~~

~~[(vi) The timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life-history stages.]~~

(c) The Identification of measures envisaged to prevent, mitigate or if possible, offset, and manage harmful Environmental Effects and risks to as low as practicable, including through the development and preparation of an Environmental Management and Monitoring Plan;

~~[(c)bis An analysis of reasonable alternatives to the planned activity under the jurisdiction or control of a State Party, including the no-action alternative;]~~

(d) The preparation and submission to the Authority of the Environmental Impact Statement in accordance with Regulation 47 and the applicable Standards and taking into account the relevant Guidelines.

3. When, following the approval of a Plan of Work, the Contractor modifies the Plan of Work in such a way that the proposed modification constitutes a Material Change in the Environmental Management and Monitoring Plan or Closure Plan as determined under these Regulations, ~~Screening shall also be part of an the environmental impact assessment process, when, following the approval of a Plan of Work, the Contractor modifies the Plan of Work in such a way that the proposed modification constitutes a Material Change in the Environmental Management and Monitoring Plan or Closure Plan in order to determine whether a revised Environmental Impact Statement is required~~

4. The environmental impact assessment process shall:

(a) Be based on relevant baseline data that captures temporal, ~~and~~ seasonal and spatial variation;

(b) Include an environmental risk assessment that takes into consideration the region as a whole, in accordance with the objectives and measures of the relevant Regional Environmental Management Plan, if any;

(c) Provide for ~~s~~Stakeholder consultation in accordance with relevant Standards and Guidelines at the scoping stage and before the Environmental Impact Statement is finalized; and

(d) Be subject to an independent scientific assessment prior to the submission of the proposed Environmental Impact Statement to the Authority.

[(e) Take into account the results from test mining, in accordance with Regulation 48bis -]

5. A Contractor shall review impact assessments, including for cumulative impacts of activities covered by the assessment, periodically [as indicated in the monitoring plan](#) and revise them thereafter whenever a change in the mining operation has occurred or there is relevant new information.

6. An environmental impact assessment and Environmental Impact Statement shall be considered [by the Authority](#) in accordance with Part II or regulation 57, as the case may be.

7. In [accordance with article 142 of the Convention and Regulation 4 in](#) the conduct of the environmental impact assessment, the Sponsoring State and the Contractor shall maintain consultations, including a system of prior notification, with any coastal State across whose [limits of national jurisdiction resource deposits in the Area lie](#), ~~across whose jurisdiction resource deposits in the Area lie~~ with a view to avoiding infringement of their rights and [legitimate](#) interests, ~~in accordance with Regulation 4.~~

[\[8\]\[bis\] The Environmental Impact Statement shall be in the form prescribed by the Authority in annex IV to these regulations and shall:](#)

[\(a\) Demonstrate that the proposed mining operation is in accordance with all relevant environmental Standards and with the requirements of the relevant Regional Environmental Management Plan.](#)

[\(b\) Be Based on the results of the environmental impact assessment;](#)

[\(c\) Identify comments received through public consultation on the environmental impact assessment and how they have been addressed;](#)

**Commented [BD1]:** We support the ideas contained in this para, but we think that EIS should be kept separate from EIA as treated in this article.  
Do not support to have a single provision on EIA and EIS: keep separate.

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

<p><b>R46 bis (1)</b></p>	<p>Should reference to the Enterprise also be made?</p> <p>In general terms, we need to clarify which subjects are included in the definition of “Contractors” as defined in the Schedule and whether the Enterprise falls within the category when it has “a contract in accordance with Part III” of the regulations. This is because, there are provisions under discussion in this IWG, where reference is generally made to Contractors, hence including the Enterprise, and instances where reference is made to “the Enterprise and Contractors”, entailing that they do not fall under the same category when they have an exploitation contract with the ISA. This is the case, for instance, in Regulation 44 (1) and 44 (1) (c). A more general reflection is welcomed for a proper use of the words “Contractors”, “the Enterprise and Contractors” but also “applicant”, since an applicant could also include joint ventures formed with the Enterprise. Should the Enterprise and the Contractors be kept separate, we should amend the regulations to incorporate the Enterprise to the many provisions which, to date, only refer to Contractors, like article 46 and following.</p> <p>Modify “marine” with “Marine”.</p> <p>Replace “mining operation” with “Exploitation”.</p>
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	<p>Replace “these regulations and the applicable Standards” with “the Rules of the Authority”.</p> <p><i>Indeed, we need to clarify what is meant by “Rules of the Authority” as included in other Regulations and whether the Convention, the Agreement and Standards are parts to such Rules. This is because, in some regulations, it is not appropriate to refer to all the legal instruments contained in the definition at the same time, as some could be applicable while others could not.</i></p> <p><i>We do not see it appropriate to include also the Convention and the Agreement in the definition of the Rules. While the Convention and the Agreement represent the funding instruments of the operation of the ISA, the rules, regulations and procedures are third degree sources, and give treaties to which they are subordinated in a logical-formal sense greater flexibility and adaptability, precisely in those contexts characterized by rapid technological progress.</i></p> <p><i>Moreover, we also believe it appropriate to have decisions of the Council included among the Rules of the Authority, to the extent that, pursuant to section 3.3 (a) of the Standard clauses for exploitation contracts, they are binding for contractors and contribute to the definition of the legal framework within which exploitation operations take place.</i></p> <p><i>In any case, whatever the decision taken by the Council in this regard, we call for having a consistent use of the wording throughout the text for legal certainty. Instances in the draft text, where regulations <b>and</b> Rules of the Authority are mentioned together do not seem to go in this direction (see, for instance, in the standard clauses).</i></p> <p>Support initial and final additions.</p>
<b>R46 bis (1) (bis)</b>	We support the content of para. 1 bis, but we should streamline it with para 7 which has a very similar content.
<b>R46 bis (2)</b>	Support additions.
<b>R46 bis (2) (a)</b>	<p>Delete “as well as...Stakeholders”: Stakeholder engagement shall not be limited to scoping, as provided for in para. 4. Consider if the Stakeholder engagement strategy developed by the ISA should be mentioned in some way in this context</p> <p>Add, after “operation”, “which are relevant to assess and alternatives – including the no-action option – that Mitigate Environmental effects”.</p>
<b>R46 bis (2) (b)</b>	Support insertions, but literals should be deleted: this level of detail should be moved to S&G.
<b>R46 bis (2) (c) bis</b>	Do not support
<b>R46 bis (3)</b>	Support as redrafted, with deletion.
<b>R46 bis (4) (b)</b>	We support the Deletion of “if any”. But consider that this would mean that not only a PoW cannot be approved by the ISA if a REMF has not been adopted, but also that the applicant cannot comply with the EIA provision and thus present its PoW.

<b>R46 bis (5)</b>	Do not support addition
<b>R46 bis (7)</b>	Support addition and deletion, but modify: <ul style="list-style-type: none"><li>- “across whose <b>limits of national</b> jurisdiction resource deposits in the Area lie”</li><li>- Delete repetition of “ across whose...”.</li><li>- Add, in the last line, “legitimate” before “interest”.</li></ul>
<b>R46 bis (8)</b>	We support the ideas contained in this para, but we think that EIS should be kept separate from EIA as treated in this article. Do not support to have a single provision on EIA and EIS: keep separate.