

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

***Informal Working Group - Environment***

*Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete.*

**1. Name(s) of Delegation(s) making the proposal:**

**New Zealand, Chile, Costa Rica**

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

**Regulation 5, 13, 15, 46bis**

**NB: this is a package of amendments to be considered together. The package seeks to ensure compliance with Art 145 UNCLOS, as explained in the rationale below.**

**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.**

**Regulation 46bis Environmental Impact Assessment**

**2. The environmental impact assessment shall include: (...)**

(b) Impact assessment and evaluation to describe and predict the nature and extent of the Environmental Effects of the mining operation, including individually, in combination, cumulatively and residual effects, using Best Available Scientific Evidence and taking into account:

- 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.
- (...)

### **Regulation 13 Assessment of applicants**

(...)4. The Commission shall determine if the proposed Plan of Work: (...)

- f. Provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities, by assessing whether the proposed plan:
  - i. Gives rise to a non-negligible risk of pollution, damage to flora and fauna, or other harmful effects to ecosystem integrity (i.e. ecosystem structure or function) in a manner that:
    - a. impairs the ability of affected populations to replace themselves; or
    - b. degrades the long-term natural productivity of habitats or ecosystems; or
    - c. causes, on more than a temporary basis, significant loss of species richness, habitat or community types.
  - ii. Gives rise to a non-negligible risk that it will undermine the protection and conservation of other natural resources of the Area.

In conducting this assessment, the Commission shall evaluate harmful effects individually, in combination and cumulatively including effects from other activities in the area. The Commission shall take into account all proposed mitigations and risk management measures and shall consider the matters set out at Regulation 46bis (2)(b).

### **Regulation 15**

(...) 3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that: (...)

- (c) Pursuant to regulation 13(4)(f), it fails to provide for the effective protection of the marine environment from harmful effects that may arise from the proposed activities, or if the information is sufficiently uncertain or inadequate to determine, pursuant to regulation 13(4)(f) that the Plan of Work provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities.

### **Regulation 5**

(...) 6. The applicant shall demonstrate the technical capability, pursuant to regulation 13(3)(c) and the Section III of Annex I, in environmental management to be able to comply with the requirements of these Regulations.

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

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1. The Draft Regulations do not currently require the Legal and Technical Commission (the Commission) to reach a *substantive determination* on whether a Plan of Work ensures the effective protection of the marine environment. This proposal introduces a new stage in the Commission's review of a Plan of Work to ensure that such a determination is made before the Commission recommends the approval of a Plan of Work. It also provides clear criteria for the LTC to apply when reaching its determination.
2. The proposed – or similar – amendments are necessary to ensure compliance with Article 145 of UNCLOS which places an obligation on the Authority to ensure its rules, regulations and procedures ensure the effective protection of the marine environment from harmful effects which may arise from activities in the Area. They are also necessary to ensure that an approved Plan of Work is in conformity with Article 145 UNCLOS, as required by Annex III of UNCLOS.<sup>1</sup>
3. The proposed amendments require the Commission to determine whether a Plan of Work will ensure the effective protection of the marine environment. That determination is to be made against specified criteria drawn from the FAOs *International Guidelines for the Management of Deep-Sea Fisheries*. These criteria constitute a relevant precedent as they are designed to avoid significant adverse impacts on vulnerable marine ecosystems arising from fishing activity that disturbs the seabed. They are internationally recognised and widely followed.
4. The proposed amendments also:
  - a. require applicants to provide necessary information to enable the Commission to assess compliance with the specified criteria;
  - b. ensure that the Commission's assessment incorporates the precautionary approach, in line with customary international law<sup>2</sup> and draft Regulations 2 and 44;
  - c. require applicants to demonstrate sufficient technical capacity in environmental management to be able to comply with the requirements of the Regulations;

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<sup>1</sup> Articles 3(4)(a) and 6(3) of the United Nations Convention on the Law of the Sea (UNCLOS) Annex III

5. The package of amendments proposed relate to Parts II and IV of the Draft Regulations and should be read and negotiated together.