

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.

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

United States

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

DR 46bis

**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.**

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

2.(a) ~~A Scoping process to identify and prioritize the main activities and potential impacts associated with the proposed mining operation, identify reasonable alternatives to the proposed activity, including a no-action alternative, as well as to identify and engage with Stakeholders,~~ in order to focus the Environmental Impact Statement on the key environmental issues.

2.(b) ~~An Environmental Impact assessment and evaluation process to describe and predict the nature and extent of the Environmental Effects of the mining operation, in accordance with the applicable Standard, 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.]~~

- 2.(c) ~~The~~ Identification of measures envisaged to prevent, reduce, and control, ~~mitigate or if possible, offset,~~ and manage harmful Environmental Effects and risks to as low as reasonably practicable (...).
- 4.(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;~~
- 4.(c) Provide for ~~s~~Stakeholder consultation in accordance with relevant Standards and taking into account the relevant Guidelines via effective, time-bound opportunities for participation, including at the scoping stage and before the Environmental Impact Statement is finalized; and
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 when the review indicates that such changes warrant a revision.
6. An environmental impact assessment ~~and Environmental Impact Statement~~ shall be considered by the Authority 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, with respect to resources deposits in the Area which lie across the limits of national jurisdiction, the Sponsoring State and the Contractor shall maintain consultations, including a system of prior notification, ~~with any coastal State across whose 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.
- 8bis.(b) ~~Be Based on~~ Describe the results of the environmental impact assessment;
- 8bis.(c) Identify substantive comments received through public consultation on the environmental impact assessment and how they have been addressed;

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

Firstly, in paragraph 1bis and paragraph 7, regarding the placement of the phrase “across whose jurisdiction resource deposits in the Area lie,” we propose adjusting the text as presented above for clarity and to better align with the text of the Convention. We can see an overly broad interpretation whereby the sponsoring State and Contractor will be obliged to provide prior notification to any coastal State that has a resource deposit lying across its boundary, rather than the coastal States across whose boundary the resource deposit that is the subject of the EIA lies.

We appreciate the addition of paragraph 2(c)bis and propose similarly in paragraph 2 (a), that the Scoping Process “identify reasonable alternatives to the proposed activity, including a no-action alternative” to include alternatives analysis as an essential part of an EIA. Even where there are no technically or economically feasible alternatives, the EIA should still consider the alternative of “no action” as a means of meaningfully assessing the effects of the proposed action from the environmental baseline.

In paragraph 2 (b), we suggest that the list of considerations presented for inclusion in the EIA may be a level of detail that is better suited to the EIA Standard rather than this regulation. We believe that moving this inventory of considerations to the Standard will allow for a more complete treatment of the required contents of the EIA. We therefore recommend that paragraph (b) instead refer to the

applicable Standard here.

In paragraph 2 (c), we propose that the text be modified to "prevent, reduce, and control," which is the terminology used elsewhere in the regulations to describe the mitigation hierarchy, add "reasonably" before practicable as a term of art, and support the proposal of other delegations to remove the language "or if possible, offset," for consistency with other references to the mitigation hierarchy in the regulations.

In paragraph 4 (b), we propose removing the phrase "if any," as this phrasing suggests that exploitation could proceed without a REMF in place. The United States believes that having a REMF in place in advance of exploitation is necessary to ensure adequate protection of the marine environment, and therefore we would suggest that all such instances of "if any" following "Regional Environmental Management Plan" be removed from the text.

In paragraph 4(c), we propose adding "via effective, time-bound opportunities for participation" to more specifically provide for opportunities for stakeholder participation in the EIA process.

In paragraph 5, since there may be instances when a change in the mining operation does not warrant a revision to the impact assessment, we recommend adding text to specify that the results of the review will indicate whether revision is warranted.

In paragraph 6, since the EIS is part of the EIA process, we propose simply referring to the EIA as inclusive of the EIS.

In paragraphs 1 and 7, we recommend use of the phrase "legitimate interests" of coastal States for consistency with the Convention.

In paragraph 8bis(b), we suggest replacing "Be based on" with "Describe", as previous Council discussions have led to an understanding that the EIS is the documentation of the EIA process.

In paragraph 8bis(c), we propose that the text specify that comments received through public consultation to be identified and addressed by the Contractor be "substantive" in nature, as a requirement to address non-substantive comments may prove overly burdensome. We note the latest draft text for the BBNJ treaty includes similar language.