

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name of Working Group:

President

2. Name(s) of Delegation(s) making the proposal:

Republic of Costa Rica

3. Please indicate the relevant provision to which the textual proposal refers.

DR 33

4. 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.

2. The contractor shall, upon becoming aware of an Incident:

- (a) Notify its Sponsoring State or States and the Secretary-General immediately, but no later than 24 hours from the ~~[Incident occurring]~~ [moment the Contractor becomes aware of the Incident];

~~alt 1. Notify its sponsoring State or States and the Secretary-General immediately 24 hours after the time at which it has reasonable grounds to believe that the Contractor should have become aware of the occurrence of the Incident;~~

~~alt 2. Notify its sponsoring State or States, relevant adjacent Coastal States and the Secretary-General immediately, as soon as reasonably practicable but no later than hours from the incidence occurred;~~

- (b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident;
- (c) Undertake promptly, and within such time frame as stipulated, any instructions received from the ~~[Secretary-General]~~ [Compliance Committee] which may involve new environmental assessment, Mitigation or monitoring measures ~~in consultation with the sponsoring State or States, flag State, coastal State or relevant international organizations, as the case may be;~~
- (d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident; ~~and~~
- (e) Record the Incident in the Incidents Register, which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under regulation 34; ~~and,~~
- (f) ~~Following resolution of an Incident, provide the Authority with an Incident report which details the Incident and any corresponding data on its nature, scale, and impacts, the Contractor’s response, and lessons learned.~~

4. The Secretary-General shall

(a) before issuing instructions under this regulation, request instruction from the [Compliance Committee / Council], and consult with the sponsoring State or States, and other relevant States or international organisations, insofar as it is feasible to do so taking account of the urgency in the situation;

(b) follow any relevant Guidelines and Standards in the issue of instructions under this regulation;

(c) report such Incidents and measures taken to the Commission and the Council at their next available meeting.

5. The Secretary-General shall publish copies of Incident reports submitted by Contractors.

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

As also mentioned by African Group, United Kingdom, Australia, Jamaica, China, and Morocco, we prefer the original wording of subparagraph 2a. It is possible that an Incident could occur without the Contractor's immediate knowledge hence the notification requirement should refer to the time at which the Contractor becomes aware of the Incident's occurrence, rather than the actual time of occurrence. For subparagraph 2c, it is not clear to us whether the Secretary-General here is acting merely to communicate an instruction from an executive organ of the ISA, or whether it is envisaged that the Secretary-General would be making this decision about required response actions in the event of an Incident. We consider that the compliance committee may be a more appropriate entity to be taking the substantive decisions in this scenario. This could be amended here, or rather addressed in slightly more detail in paragraph (4), as we have proposed below. We also consider that consultation with States by the ISA fits better in paragraph (4) than here in (2)(c), hence the deletion here (in order to relocate to paragraph (4), below), though understanding that an intersessional working group is seeking to address this issue. Lastly, we recommend a new subparagraph be inserted (f) which would add a requirement to submit an Incident report. It is important, including to learn from Incidents, that incident reports should include: the response actions, lessons learned, and relevant data on such matters as the nature of the Incident, scale and releases to the environment.

Regarding our proposed additions to paragraph 4, wherever circumstances allow, the Secretary-General should base instructions to Contractors upon the technical advice of the relevant organ of the ISA and decisions of the Council, to avoid acting *ultra vires*. Consultation with the relevant States and organisations (as relocated here from paragraph 2(c)) is also advisable to enhance coordination efforts.

Lastly and in connection with newly proposed paragraph 2(f), we propose incident reports be made publicly available, enabling transparency and allowing for other Contractors to learn lessons from them. We note that the United Kingdom made a similar intervention to this effect.

