

**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.im.

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.

Schedule: Use of terms and scope

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.

“the Authority” means the International Seabed Authority as established by Part XI of the Convention, [and for the purposes of these Regulations shall include all organs of the Authority save for the Enterprise, except where the Enterprise is expressly stated as being included].

“Best Available Techniques” means the latest stage of development, and state-of-the-art processes, [within reasonable technical and economic constraints,] of facilities or of methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the protection of the Marine Environment from the harmful effects of Exploitation activities, taking into account the guidance set out in the applicable Standards and Guidelines.

“Best Environmental Practices” means the application of the most appropriate combination in terms of achieving effective protection of the Marine Environment, of environmental control measures and strategies, [based on the Best Available Scientific Information and Best Available Technology which] [that] will change with time in the light of improved knowledge, understanding or technology, [as well as the incorporation of the relevant traditional knowledge of Indigenous Peoples and local communities] taking into account the [guidance set out in the] applicable [Standards and] Guidelines and including traditional knowledge and international best practices.

“Contractor” means a [contractor having a contract in accordance with Part III and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.] [party to an exploitation contract in accordance with Part III of these regulations.] and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.

“Environmental Effect” means any consequences in the Marine Environment arising from environmental impacts caused by the conduct of Exploitation activities, ~~whether~~ ~~being~~ positive, ~~negative~~, direct, indirect, temporary or permanent, or Cumulative environmental effect ~~(whether arising over time or in combination with other mining impacts)~~ ~~[effects or impacts]~~ ~~[stressors and activities in the same area, including those not regulated by the Authority]~~. ~~[mining impacts or impacts caused by other sources]~~

“Environmental impact” means changes (physical and or chemical) to the environment resulting from Exploitation activities.

“Incident” means an event, or sequence of events, where activities in the Area result in:

- (a) A marine Incident or a marine casualty as defined in the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code, effective 1 January 2010);
- (b) A significant unanticipated or unpermitted adverse impact ~~Serious Harm~~ to the Marine Environment or to other existing legitimate sea uses, whether accidental or not, or a situation in which such ~~Serious Harm to the Marine Environment~~ adverse impact was only narrowly avoided is a reasonably foreseeable consequence of the situation; and/or
- (c) Damage to a submarine cable or pipeline, or any Installation.

“Marine Environment” includes the physical, chemical, oceanographic, geological, genetic and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, ~~[species, biodiversity, ecosystems.]~~ as well as the seabed and ocean floor and subsoil thereof.

“Material Change” means a change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, ~~[changes to environmental effects or effects on stakeholders]~~ the availability of new knowledge or technology and changes to operational management ~~included those changes~~ that are necessary to reflect updated or new Standards or ~~that are to be considered in the light of the Guidelines.~~

“Mining Area” means the part or parts within the Contract Area from which minerals will be extracted, as described in a Plan of Work, as may be modified from time to time in accordance with these regulations.

“Rules of the Authority” means ~~[the Convention, the Agreement,]~~ these regulations and other rules, regulations and procedures of the Authority ~~[including Standards] and Guidelines]~~ decisions of the Council or Assembly of the Authority, and any other ISA instruments expressed as being binding upon Contractors as may be adopted from time to time.

Alt. **“Serious Harm to the Marine Environment”** is Environmental Effect that, individually in combination or cumulatively meets any of the following criteria:

- (a) it is not likely to be redressed through natural recovery within a reasonable period;
- (b) it impairs the ability of affected populations to replace themselves;
- (c) it degrades the long-term natural productivity of habitats or ecosystems;
- (d) causes, on a more than temporary basis, a significant loss of species richness or biological diversity, including community structure, genetic connectivity among

populations, ecosystem functioning and ecosystem services on the seabed, at the sea surface, and in midwater and in the benthic boundary layer, or habitat; or
(e) criteria for significance contained in the relevant Regional Environmental Management Plan, or Standards.

“Standards” means such ~~technical and other standards and protocols, including performance and process requirements,~~ documents adopted by the Authority pursuant to regulation 94. ~~[Standards have to be considered as mandatory.]~~

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

Authority - The Regulations should clarify when the Enterprise is included within the use of the word ‘the Authority’ and when it is not. There is a tension and potential conflict arising from the status of the Enterprise as both a Contractor and an organ of the Authority, which will require careful management. To start, the Enterprise should not be included in the general definition of ‘the Authority’, but should be specifically referenced in certain circumstances (e.g. requirements to adhere to policies of the ISA), and in such instances the wording ‘and The Enterprise’ will need to be added.

Best Environment Practice - In the present draft, no objective is given for determining the ‘most appropriate’ measures. This objective should be protection of the Marine Environment. Best Environmental Practices (‘BEP’) should also expressly require use of Best Available Techniques and Best Available Scientific Evidence.

BEP should also incorporate binding Standards. Reliance on voluntary Guidelines would result in inconsistent environmental management between Contractors. Requiring Contractors to implement BEP without the use of mandatory Standards to set relevant parameters could place a significant burden on the ISA to assess proposals (and operational environmental performance) and determine on a case-by-case basis whether Contractors are BEP, instead of merely determining whether Contractors are meeting the requirements of the prescribed Standards. ‘Traditional knowledge’ should also be included in an assessment of best practice, per the Federated States of Micronesia’s response to the ISA’s draft Environmental Management System Standard and Guideline stakeholder consultation 2020

Contractor - We would retain the last part of the para to include, where relevant, employees and subcontractors of the Contractor. Additionally, we note this definition would, and presumably intends to, include the Enterprise. If there are any instances in the Regulations where the term ‘Contractor’ is not intended to include the Enterprise, this should be expressly stated.

Environmental Effect - Where definitions are available in EIA guidance, the general consensus is that impacts are defined as the changes resulting from an action, and effects are defined as the consequences of impacts.

Rules of the Authority - The definition of 'Rules of the Authority' as drafted does not appear to include: ISA Standards or ISA Council decisions (unless added in accordance with the proposed amendment), also ISA Guidelines, ISA contracts, and LTC Recommendations for the Guidance of Contractors. Or at least this is not clear – as it depends on whether any of those items are classified as 'rules, regulations or procedures' of the ISA. It would be helpful either to amend this definition to include any legally-binding instruments of the ISA, or for it to be made clear – in the Regulations or by way of subsidiary guidance - whether or not the above-listed documents are classified as 'rules, regulations and procedures' of the ISA, or whether they have different status. The insertion 'including Standards' (proposed by Australia) suggests that Standards would be among the rules, regulations and procedures ('RRP') of the ISA. Elsewhere the Regulations use '[RRP] as well as Standards' suggesting that Standards are not RRP. The Council should decide whether Standards incorporated into these Regulations are RRP; and this should be reflected throughout the Regulations. The drafting proposals made throughout this document presume that Standards are not considered RRP. NB this may be an important distinction because UNCLOS enables suspension or termination of a Contractor's rights in the event of violation of the contract or RRP, and not in the event of violation of other instruments.

Serious Harm - Stakeholders have noted that defining 'serious harm' as 'significant adverse change' may not be providing a clearer or more actionable definition. This proposed Alt. text is based on the definition of 'significant adverse impact' from the FAO's International Guidelines for the Management of Deep-sea Fisheries in the High Seas