

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> 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](mailto:council@isa.org.jm).

**1. Name of Working Group:**

Protection and preservation of the marine environment

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

Norway

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

DR 46bis

**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.**

~~1 bis. 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 any coastal State across whose jurisdiction the resource deposits lie, including through maintaining consultations and a system of prior notification, in accordance with Regulation 4.~~

(a) A scoping ~~process~~ Stage and scoping report in accordance with Regulation 46ter and annex IVbis to identify and ~~prioritize risk assess~~ the ~~main-anticipated~~ activities and potential impacts associated with the proposed mining operation which are relevant to the assessment, and identify reasonable alternatives to the proposed activity, including a no-action alternative, to 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. ~~The outcome will result in a binding document for all the parties in the mining operation. It should include assessment of the available baseline data and their compliance with the relevant Standard, an environmental risk assessment, and the results of the consultation process with Stakeholders in line with the relevant Standards and Guidelines and set out the terms of reference for the environmental impact assessment.~~

(b) An Environmental impact assessment ~~and evaluation process~~ to describe the Marine Environment ~~including Underwater Cultural Heritage~~ and predict the nature and extent of the Environmental Effects of the mining operation, in accordance with the applicable Standard, including cumulative and synergistic impacts and residual and synergistic effects also considering other existing and foreseen mining operations, using Best Available Scientific Evidence, Best Archaeological Practices, 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 ~~affected for its long survival during one or more of its life history stages.~~

(c) The Identification of measures of the mitigation hierarchy envisaged to prevent, reduce, and control, mitigate or ~~if where possible, offset avoid, minimize, remediate, rehabilitate and restore offset or, if possible as a last resort and if approved, or if possible, offset or if possible, offset~~ and manage ~~harmful~~ Environmental Effects and risks to as low as reasonably practicable, and within acceptable levels in accordance with environmental quality objectives Standards 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;]~~ [(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;]

3. In addition to the Environmental Impact Statement required for an application for a plan of work pursuant to Regulation 7(3)(d), a Contractor must conduct an additional new-Environmental Impact Assessment and submit a new-or-revised Environmental Impact Statement when:

(a) A Material Change to an existing Plan of Work is proposed which is likely to increase the adverse Environmental Effects caused by the activities;

(b) An activity described in the Plan of Work is predicted to exceed the impact thresholds set out in the Commission's Recommendations for the Guidance of Contractors ISBA/25/LTC/6/Rev.1 or a Standard that sets screening thresholds for environmental impact assessment, and this activity and predicted impact has not already been addressed by an Environmental Impact Statement; or,

(c) Otherwise deemed necessary by the Commission, in accordance with applicable Standards and taking into account Guidelines, e.g., when changes to an existing Plan of Work is proposed other than the type described under sub-paragraph (1)(a) or when the Commission requests

an applicant to change its proposed Plan of Work during the application stage under Regulation 14.

4. The environmental impact assessment process shall:

(a) Be based on relevant baseline data that captures temporal, seasonal and spatial variation in accordance with Standards and the relevant Regional Environmental Management Plan;

(b) Include an environmental risk assessment and a survey of the seabed to identify Underwater Cultural Heritage, that takes into consideration the region as a whole, in accordance with the objectives and measures of the relevant and applicable Regional Environmental Management Plan, ~~if any;~~

(c) Provide for ~~s~~Stakeholder consultation in accordance with regulation 93bis, 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;~~

~~(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, if applicable in accordance with Regulation 48bis;~~

~~(f) Be conducted in accordance with the terms of reference developed during the scoping process;~~

~~(g) Be carried out by a suitable combination of qualified, independent and competent environmental impact assessment practitioners and scientific experts experienced in the relevant issues for the particular project and its location; and~~

~~(h) Identify scientific knowledge gaps or data uncertainties, and the degree to which these influence the assessment.~~

7. In accordance with article 142 of the Convention and Regulation 4 in the conduct of the environmental impact assessment, ~~with respect to resource 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 whose limits of national jurisdiction resource deposits in the Area lie adjacent to the Contract Area ~~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.

~~8. In conducting an environmental impact assessment for the purposes of these regulations, an applicant or Contractor shall proactively consult with Stakeholders at all stages, in accordance with relevant Standards and taking account of Guidelines; and in the course of such consultations, the applicant or Contractor shall:~~

~~(a) Provide Stakeholders with access to up to date and comprehensive information about the proposed activities and environmental data and impacts;~~

~~(b) Use best efforts to obtain Stakeholder comments on the draft scoping report and draft environmental impact statement for a reasonable period.~~

~~Provide a reasonable opportunity for Stakeholders to raise enquiries and to make known their views;~~

~~Make publicly available Stakeholder comments received during the consultation process, including on the applicant or Contractor's own website;~~

~~(d) Record and address, in the scoping report and Environmental Impact Statement respectively, any Stakeholder comments received.~~

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

Streamlining and structuring of DR46bis is part of the Intersessional Working Group on structuring of the EIA provisions, including Annex IV. Without prejudice to the results of this group, Norway has the following comments to the current draft:

- Para 1bis and 7 are duplicative. We prefer to retain the reference to article 142 in para 7, as it stands. We suggest deleting “with respect to resource deposits in the Area which lie across the limits of national jurisdiction” as this risks narrowing the original intent and scope.
- The description of the Scoping step should ideally be in a separate provision *before* DR46bis. The description at the REG level should be brief and over-arching, and not overly prescriptive. We question the meaning of the sentence “The outcome will result in a binding document for all the parties of the mining operation” and suggest deleting.
- Underwater Cultural Heritage should be one of the factors to be assessed in the EIA and described in the EIS.
- Para 2 b) (i)-(vi) should be moved to a Standard on EIA.
- Norway prefers the following wording: c) The Identification of measures of the mitigation hierarchy envisaged to prevent, reduce, and control, mitigate or where possible, avoid, minimize, remediate, rehabilitate and restore or, as a last resort offset and manage harmful Environmental Effects and risks to as low as reasonably practicable, and within acceptable levels in accordance with environmental quality objectives Standards including through the development and preparation of an Environmental Management and Monitoring Plan; The same should also be reflected in DR 44.
- C)bis is important, and Norway wants to retain this para.
- (3) Norway clearly recommends changing from “new” EIS to “an additional” EIS, and or “revised EIS”. An EIA/EIS is as a clear main rule a finished product. If necessary, one can demand *additional* information to be collected and described, but always building on the existing EIA/EIS already conducted. The difference between (3) c) and a) also needs clarification. There must be clear requirements for an additional EIA/revised EIS.
- (4) c) ties in with the work on stakeholder consultation. We prefer a clean reference to the new DR 93, which in turn will refer to standards and guidelines.
- (4) d) Suggest deleting. The EIS is the Contractor's responsibility. Need for clear lines of responsibility and liability.
- (4) e) There is a need for a qualifier here based on whether test mining will be a requirement or not, and whether the exceptions apply. Norway however, supports (g) in this regard.
- (8): Norway prefers a clear ref to DR93 on stakeholder consultation here.

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Protection and preservation of the marine environment

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DR 46 bis (alt)

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**46bis (alt)**

**Environmental Impact Assessment Scoping**

1. An application or Contractor shall use ~~environmental impact assessment~~ scoping to identify and prioritize the main activities and potential impacts associated with the proposed mining operation, in order to focus the Environmental Impact Assessment and Environmental Impact Statement on the key environmental issues.

4. Upon receipt of a scoping report from an applicant or Contractor, the Secretary-General shall:

e. Make the report available on the Authority’s website ~~for a period of at least 60 days~~, with an invitation for members of the Authority and Stakeholders to submit comments in writing within a period of 90 days;

f. Following the close of the comment period under paragraph (1)(a), provide any comments received to the applicant or Contractor with a specified timeframe for response;

~~g. Following the close of the comment period under paragraph (1)(a), provide any comments received to the applicant or Contractor with a specified timeframe for response;~~

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

- DR 46 bis (alt) is not alternative to DR 46 bis, but an additional REG on the important step of scoping which provides and outlines (through the Scoping report) the steps to be conducted in the EIA process and the timeline, as well as the proposed impact assessment to be done.
- Norway prefers DR48 bis (alt) to come before DR46 bis, for correct sequencing.
- The scoping report should be made available on the Authority’s website permanently. The comment period should however be 90 days.
- Letter g and f are duplicative. The reference is also currently wrong – it should be “the close of the comment period under para 4 e).”