

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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:

Federal Republic of Germany

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

Draft Regulation 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.

Regulation 46bis

Environmental impact assessment

1. An applicant or Contractor, as the case may be, shall carry out an environmental impact assessment ~~process~~ ~~one of~~ the potential effects on the ~~M~~marine ~~E~~environment of the proposed ~~mining operation~~ ~~Exploitation~~ ~~mining operation~~ in accordance with ~~the Rules of the Authority these regulations~~ and the applicable Standard and ~~taking into account the relevant Guidelines~~ as well as ~~Good Industry Practice~~, Best Available Scientific Evidence, Best Environmental Practices and Best Available Techniques.

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

1 ter. The purpose of an environmental impact assessment under these regulations shall be to predict environmental impacts anticipated from the proposed activities, to enable the Authority to assess the potential adverse Environmental Effects, with the aim to:

- (a) Ensure effective protection for the marine environment from harmful effects which may arise from such proposed activities.
- (b) Ensure that activities in the Area are carried out with reasonable regard for other activities in the Marine Environment, and
- (c) Prevent Serious Harm to the Marine Environment arising out of the proposed activities.

2. The environmental impact assessment process shall include the following steps:

- (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, 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;}~~

(d) The preparation and submission to the Authority of the Environmental Impact Statement to document and report the results of the environmental impact assessment in accordance with Regulation 47, annex IV to these regulations, the applicable Standards and taking into account the relevant Guidelines.

(e) Publication and review by the Commission of the Environmental Impact Statement, and publication of the report and recommendation by the Commission to the Council pursuant to Regulations 11 – 15.

(f) A decision by the Council to approve, or not approve, the proposed activities or proposed modification to the Plan of Work that was the subject of the Environmental Impact Assessment, including any conditions imposed upon an approval, which decision shall be recorded and published in accordance with Regulation 16.

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 a 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(s) that sets screening on environmental 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.

~~When, following the approval of a Plan of Work, the Contractor modifies the Plan of Work in such a way that the proposed modification constitutes a Material Change in the Environmental Management and Monitoring Plan or Closure Plan as determined under these Regulations, screening shall also be part of the environmental impact assessment process in order to determine whether a new Environmental Impact Assessment and Environmental Impact Statement is required.~~

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 sStakeholder 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, 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.

5. A Contractor shall review periodically, as indicated in the Environmental Management and Monitoring Plan, impact assessments previously performed, including ~~for~~ cumulative and synergistic impacts of activities covered by the assessment, ~~periodically as indicated in the monitoring plan~~ and revise them thereafter ~~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 or when the review indicates that such changes warrant a revision.

6. ~~An environmental impact assessment and~~ An Environmental Impact Statement shall be considered by the Authority in 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 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;
 - (c) 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.
9. The Environmental Impact Statement shall be in the form prescribed by the Authority in annex IV to these regulations and shall:
 - (a) Demonstrate that the proposed mining operation is in accordance with all relevant environmental Standards and with the requirements of the relevant Regional Environmental Management Plan.
 - (b) ~~Be Based on Describe~~ the results of the environmental impact assessment;
 - (c) ~~—~~ Identify substantive comments received through public consultation on the environmental impact assessment and how they have been addressed;

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Environmental Impact Assessment Scoping

1. An applicant~~ion~~ 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 Statement on the key environmental issues.
2. In undertaking the environmental impact assessment scoping process, the applicant or Contractor shall:
 - a. Review available data and knowledge, and propose additional data to be collected and studies needed to complete an Environmental Impact Statement in accordance with these regulations;
 - b. Undertake a preliminary impact analysis and environmental risk assessment which will be updated as the environmental impact assessment proceeds;

- c. Proactively identify Stakeholders in accordance with relevant Standards and taking into account any Guidelines; and
- d. Identify and evaluate feasible alternative means of carrying out the project that will be examined in detail in the environmental impact assessment.
- 3. The applicant or Contractor shall prepare and submit to the SecretaryGeneral a scoping report in accordance with this regulation and in the format prescribed in Annex IVH bis.
- 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;
 - 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;~~
 - ~~h.g. At the expiry of the timeframe specified in paragraph (1) (b), provide the Commission with the scoping report, any stakeholder comments received, and any responses to those comments from the applicant or Contractor.~~
- 5. The Commission shall consider a scoping report submitted in accordance with this regulation, and any comments and responses received, in accordance with any relevant Standards and taking into account Guidelines. Based on this review, the Commission shall make recommendations to the applicant or Contractor regarding the proposed environmental impact assessment, accompanied by a detailed rationale.
- 6. The Commission's recommendations under paragraph (2) may include recommendation:
 - i. to revise the environmental risk assessment or other aspects of the scoping report based on different methodology or inputs;
 - j. to amend the proposed terms of reference for the environmental impact assessment; or
 - k. to re-submit a revised scoping report for further Stakeholder consultation and Commission review, in the case where uptake of any of the Commission's recommendations are likely to lead to a Material Change in the Scoping Report.
- 7. The applicant or Contractor shall take into account the Commission's recommendations under this regulation, before proceeding with an environmental impact assessment process.

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

We look forward to discussing the results of the work on streamlining the EIA provisions in the Regulations and standards/guidelines and suggest to revise the content after having an understanding of the structure.

In Para 3 it has yet to be discussed whether a full new EIA process (including Scoping etc) is to be conducted or only the Assessment and EIS report.

In Para 3 b) we suggest redrafting and deleting the reference to the mentioned LTC recommendations as they are applicable for exploration only.