

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS FOR THE 28<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 and send to [council2022@isa.org.jm](mailto:council2022@isa.org.jm).

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

Submitted by the International Marine Minerals Society (IMMS)

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

Definition of Best Available Techniques from [President's Text](#) – Schedule – Use of terms and scope

**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.**

**Alt. 1** “Best Available Techniques” means the most appropriate processes, within reasonable technical and economic constraints, facilities or methods of operation that indicate the practical suitability of a particular measure for the avoidance, 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 Guidelines.

**Deleted:** [the latest stage of development, and state-of-the-art processes, [within reasonable technical and economic constraints,] of

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

There are a number of terms that need better definition. These terms should be defined with input from the whole spectrum of ISA stakeholders.

There are also a few terms that have been defined (see Schedule, Use of terms and scope, of the President's Text) for which we see room for improvement.

- We do not support the definition of “Best Available Techniques” provided in Alt.2, and support Alt. 1, subject to some additional amendments. We consider that the concept of “Best Available Techniques” does not always mean the latest or state-of-the-art technology.

**Deleted:** Alt. 2 [“Best Available Techniques” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:

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Definition of “Good Industry Practice” from [President’s Text](#) – Schedule – Use of terms and scope

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“Good Industry Practice” means the exercise of ~~the~~ degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide.

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Deleted: , [based on Best Environmental Practice, which is based on Best Available Scientific Information and Best Available Technology]. [Employment of the latest widely accepted stage of development (state of the art) of processes, of facilities or of methods of operation, consistent with the Fundamental Principles, including using skill, diligence, prudence and foresight which is an would reasonably be expected to be applied by a skilled and experienced person engaged in the marine mining industry]

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

- We note the Commission’s 2019 note on the definitions of good and best industry practice ([25c-11-e.pdf \(isa.org.jm\)](#)) and agree that currently is it best to focus on Good Industry Practice, with best industry practice encompassed in Best Environmental Practices and Best Available Techniques.

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Definition of "Guidelines" from [President's Text](#) – Schedule – Use of terms and scope

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**"Guidelines"** will support the implementation of the Regulations from an administrative and technical perspective. Guidelines will also clarify documentation requirements for an application, detail process requirements (e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions. The guidelines are recommendations and not requirements. ▲▼

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**Deleted:** means documents that provide guidance on technical and administrative matters, issued by the [Authority] [Commission and the Secretary-General, respectively] pursuant to regulation 95. [Guidelines have to be considered as recommendatory].

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

- We note that there is a working definition for Guidelines in DR95: *"Guidelines will support the implementation of the Regulations from an administrative and technical perspective. Guidelines will also clarify documentation requirements for an application, detail process requirements (e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions. [The guidelines are only of a recommendatory nature ...]* This could be combined with the current definition in the Schedule.

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Definition of Material Change (from President's Text – Schedule – Use of terms and scope)

**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.**

"Material Change" means a substantial or significant change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority.

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

There are a number of terms that need better definition. These terms should be defined with input from the whole spectrum of ISA stakeholders.

There are also a few terms that have been defined (see Schedule, Use of terms and scope, of the President's Text) for which we see room for improvement.

- **"Material Change"** – a material change must be a substantial or significant change, not just any change. Additionally, the use of the words "substantial or significant" aligns with "Material Change" definitions used in mining, oil and gas and construction contracts.

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Definition of “Mitigate” and “Mitigation” from the President’s Text – Schedule – Use of terms and scope

**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.**

~~“Mitigation” means an action or activity intended to minimize, remedy or offset known potential negative impacts to the environment. These occur in a strict hierarchy:~~

- (a) ~~Avoiding an effect altogether by undertaking or not undertaking a certain activity or parts of an activity;~~
- (b) ~~Minimizing effects by limiting the degree or magnitude of the activity and its implementation to the extent practicable and necessary to ensure protection of the Marine Environment;~~
- (c) ~~Repairing, rehabilitating and/or restoring the affected Marine Environment; and~~
- (d) ~~Offsetting, only as a last resort.~~

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Deleted: Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity.

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

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There are also a few terms that have been defined (see Schedule, Use of terms and scope, of the President’s Text) for which we see room for improvement.

- **Mitigate and Mitigation** – We do not entirely agree with the current definition, which seems to replicate much of the mitigation hierarchy but omits the final step of offsetting. While

offsetting should be considered a last resort option, it is part of the mitigation hierarchy, and it is standard practise to consider it when making environmental management decisions. With this in mind, we suggest the above definition for "Mitigation".

- Avoidance is the first option for environmental protection, followed by mitigation, to minimize impacts

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Definition of “Standards” from President’s Text – Schedule – Use of terms and scope

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“Standards” means methodological, procedural, technical or environmental rules that are necessary to implement the regulations and to ensure a coherent approach to monitoring and assessment, including performance and process requirements, adopted pursuant to regulation 94. Standards are legally binding on Contractors and the Authority.

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**Deleted:** such technical and other standards and protocols, including performance and process requirements, adopted pursuant to regulation 94. [Standards have to be considered as mandatory.] ¶

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

- Suggested Definition: methodological, procedural, technical or environmental rules that are necessary to implement the regulations and to ensure a coherent approach to monitoring and assessment, including performance and process requirements, adopted pursuant to regulation 94. Standards are legally binding on Contractors and the Authority.
- Comment: We note that there is a working definition for Standards in DR94: “Standards shall be methodological, procedural, technical and environmental rules that are necessary to implement the regulations and to ensure a coherent approach to monitoring and assessment, as referred to in Regulation 45. Standards are legally binding on Contractors and the Authority.”. We propose a text that combines wording from DR94 and the current definition in the Schedule.