

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.

The facilitators' proposed amendments are reflected in **red**.

Pew's proposed amendments and our questions or comments regarding the facilitator's remarks are indicated as in-line edits in **blue**. Where we propose deletions of the facilitator's text this is shown ~~in strikethrough and bold~~.

1. Name of Working Group:

IWG Environment

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

Pew Charitable Trusts

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

Annex IV

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.

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

General comments:

We support the inclusion of paragraph 1(e)bis which requires conformity with the ISA's own institutional environmental policy. We have called for some years for the ISA to put in place its own environmental policy as a matter of urgency. We are still awaiting a draft document from the LTC that establishes the ISA's strategic environmental goals and objectives. When that has been finalised and adopted as an ISA policy, there are numerous places where it can be incorporated by reference into the Regulations, including here. But we note that it is also relevant to all the exploration work and ISA decision-making that is taking place now. So we consider this work should be prioritised.

2. Policy, legal and administrative context

We consider there is significant overlap between 2.1, 2.2 and 2.3 as currently drafted, which might be confusing. We would recommend either better differentiating between the required content of the

different sections, or merging them, to require one comprehensive list of all international and national laws that the applicant has taken into account in developing its EIS.

We are not sure that starting a list of relevant international conventions here in the Annex is helpful. It may be better to move such a list to the EIS Standard or Guideline, and to make it more comprehensive.

We would not generally support the idea of wholesale deletion of the London Convention and Protocol from the Regulations, on the stated basis that the London Convention contains an exclusion for dumping and discharges that arise from seabed mining activities. The EIS will cover a contractor's whole operation, which includes numerous vessels conducting different activities including cargo and services transport, which should still be subject to the London Convention and Protocol, regardless that it is a seabed mining operation those vessels are supporting.

3. Description of the proposed project

Regarding subsections 3.3.2 to 3.3.5, we note the facilitator's comment to delete the requirement to describe the energy requirements of the machinery, but to replace it with new suggested text. We are not sure what the new suggested text is, in this regard.

With the deletions made in sections 3.3.2 to 3.3.5 we do not now see a requirement for the applicant to explain their plans for energy supply. We would like to see this reinstated here, or included elsewhere.

Mining is a notoriously energy-reliant industry. With heavy machinery operating 24 hours a day, 7 days a week, for years. This has implications for energy supply, as well as for greenhouse gas emissions, both issues that ISA member States should care about, not least because of commitments they have made under Agenda 2030 and the Paris Agreement.

If applicant A is proposing, say, to use in situ renewable energy for its operations, and applicant B is using hydrocarbons transported out to them by supply vessels, then applicant A's draw on global energy supply, as well as carbon footprint, will be significantly lower than applicant B's, and the ISA would be able to prefer that proposal and/or to require contractor B to re-examine their plans, in light of the principle of 'best environmental practices'. So we do consider energy requirements to be a relevant line of enquiry for the EIS. and do not agree with its deletion here.

4. Description of the existing physiochemical and geological oceanography

In 4.7, our preference would be to retain the last sentence requiring projections of how and where these aspects are likely to change over the next 50 years. We understand from the facilitator's comment that the proponent of the deletion explained that it would be too difficult to provide the required information based on current data and technology.

We understand that the same rationale was behind proposed deletions in other places, including climate mitigation, and variability in distribution and composition of benthic communities.

The cost or difficulty of obtaining data, particularly based on current capabilities, is not a valid argument against requiring its inclusion in the EIS. The ISA should require any and all information that helps it make evidence based decisions – regardless of the burden it might place on some contractors. In our view, understanding likely variations in natural conditions over the timeline of the mining project, and having

information about how benthic species are distributed, are essential pieces of the decision-making. If the contractor finds it difficult to present this information with high levels of confidence or certainty, then that can be described in the EIS, as another factor for the ISA to take into account.

5. Description of the existing biological environment

Regarding section 5.2, we appreciate the intention here to align section 5.2 with the earlier section 4.2, as they both relate to a 'Regional Overview'. However in making that edit, we want to check that we are not losing information important to section 5.2 (which was not relevant in section 4.2).

With that in mind, we think that the reference to “existing areas of particular environmental interest , ecologically or biologically significant marine areas” that was in original 5.2, seems important and we'd like to suggest it not be cut. Though perhaps the wording could be widened to allow for other types of area-based management measures or marine protected areas that may be developed over time, either under the ISA's own processes, or beyond - for example, as others have mentioned, under the new BBNJ treaty.

We support the inclusion of 5.4.1 Alt, which we find clarifies better what is required from applicants here. The title should be altered though, as the provision covers all depth ranges, not only surface. We believe this 5.4.1 alt, actually is intended to replace 5.4.1, 5.4.2 AND 5.4.3. We think this alternative is helpful, as depth ranges or zones may vary from region to region.

To limit the description of fauna to three depth ranges, as in the previous draft, may be insufficient to capture the vertical spatial variability in the water column.

This section needs to be supported as well by Standards, which specify the types of biota that must be identified, and how these should be reported. We think covering this by a Standard, which can go into detail, is better than attempting to include it in this template, which tends to mean using an incomplete list of examples.

11. Environmental management, monitoring and reporting

Regarding section 11.1, we ask that the last sentence is reinstated. Mining is renowned as one of the worst sectors globally for gender diversity. In adopting SDG 5, States agreed to work to ‘achieve gender equality and empower all women and girls’ (in all sectors). Taking informed decisions, and tracking success towards that goal is difficult if gender-disaggregated data are not available.

Regarding section 11.3, we are unsure about this deleted wording. The draft Regulations envisage an applicant submitting to the ISA the EIS (developed in accordance with this template) at the same time as the draft EMMP, for Council review of both documents concurrently.

If the two documents are being submitted together, it is unclear to us why this 11.3 is needed. If this section is retained, the wording that is being deleted to us is helpful as it would avoid the need for the applicant to summarise ‘what the EMMP would entail’ when in fact the EMMP has been drafted, and is being submitted alongside the EIS.

Regarding section 11.3.3, as we previously stated in relation to the EMMP, we are unsure about this deleted wording. Our understanding is that the draft Regulations envisage an applicant submitting to the ISA the EIS (developed in accordance with this template) at the same time as the draft Closure Plan, for Council review of both documents concurrently.

Or where an EIS is being submitted mid-contract, there will already be a Closure Plan in place. So we find this 11.3.3 confusing. But if it is to be retained, the wording that is being deleted seems helpful to reinstate, as it would avoid the need for the applicant to summarise ‘what the Closure Plan will’ when in fact the Closure Plan has been drafted, and is either being submitted alongside the EIS, or is already in place and agreed with the ISA.

Perhaps a reference to how an existing Closure Plan, where applicable, should be amended, may make more sense here?

Annex (IV bis) Scoping Report

We support the inclusion of this additional annex, which solidifies the importance of the scoping process producing a clear document along the lines described below which can be a source of stakeholder feedback and regulatory decision-making.

We encourage member States to integrate this section. Some member States have suggested moving this to a Standard. While we understand those proposals we do believe the expected content of the Scoping report is lacking in 46bis, so if this were moved to a Standard we recommend some language be added 46bis (or partially be added as part of a new regulation).