

**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.

1. Name of Working Group:

Environment

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

Portugal

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

Regulation 44(1)(a)(iv.bis)

Regulation 46bis(1bis)

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.

Regulation 44(1)(a)(iv.bis)

Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation, including through the participation and consultation of Potentially Most Affected Coastal States and other Stakeholders, as well as the prompt public release of environmental data and information at regular intervals and in an accessible format through the Authority’s website.

Regulation 46bis(1bis)

In carrying out the environmental impact assessment, the Sponsoring States and the Contractor shall conduct the environmental impact assessment with due regard to the rights, legitimate interests, and duties of the coastal States, including by maintaining consultations and a system of prior notification in accordance with regulation 4.

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

The resources found in the Area are for the benefit of humankind and must be used by all States for peaceful purposes only. This rule cannot be questioned. States must therefore act with respect to the Area “[...] in the interests of maintaining peace and security and promoting international cooperation and mutual understanding.” It is of paramount importance, however, that the legal regime governing the exploration and exploitation of these resources for the benefit of humankind be compatible with other

fundamental principles and rules governing the ocean. Coastal States have, in their exclusive economic zones, (i) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (ii) jurisdiction with regard to the protection and preservation of the marine environment. In addition, coastal States also exercise exclusive sovereign rights for the purpose of exploring their continental shelves and exploring their natural resources, and have “[...] the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.” It is also undisputed that mining activities in the Area may have impacts on other distant marine areas that extend well beyond the legal boundaries of the ocean. These obligations therefore require that international subjects—particularly States and the Authority—share information about their intent to explore and exploit shared transboundary resources. In this regard, Article 142 of UNCLOS establishes that the interests and rights of coastal States must be taken into account in connection with activities in the Area concerning resource deposits “[...] which lie across limits of national jurisdiction [...].” Specifically, UNCLOS provides for a consultation mechanism that includes a system of prior notification “[...] with a view to avoiding infringement of such rights and interests.” This legal provision underscores that the concept of common heritage of humankind is relevant even when mineral resources are simultaneously located in the Area and in areas under national jurisdiction. However, it requires consultation with the affected coastal State, since such activities directly affect its sovereign rights over the mineral deposits in question as the latter are located in areas under national jurisdiction. Article 142 of UNCLOS does not, however, seek to limit the need for consultation with coastal States only when such straddling exists. In this context, Article 142(3) of UNCLOS establishes that coastal states retain the right to take measures [...] consistent with the relevant provisions of Part XII as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline, or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the Area. Part XII refers to the protection and preservation of the marine environment, under which it is established the general obligations of States to protect and preserve the marine environment. In other words, coastal States have the prerogative to take measures to eliminate grave and imminent danger(i) to their coastline or related interests from pollution;(ii) to their coastline or related interests from the threat of pollution;(iii) to their coastline or related interests from other hazardous occurrences resulting from or caused by any activities in the Area. For these purposes, the existence of a mechanism for public notification and participation by coastal States is essential to ensure that they can exercise the right enshrined in Article 142(3) of UNCLOS. This is the rationale behind Article 34 of the recently negotiated text of the BBNJ Agreement, which states Parties shall ensure the timely public notification of a planned activity [...], and planed and effective, time-bound opportunities [...] for participation of all States, in particular adjacent coastal States and any other States adjacent to the activity when they are potentially most affected States [...].” Moreover, a mechanism that goes beyond the consultation mechanism of Article 142(2) is fundamental to ensuring peace, security,

cooperation, and mutual understanding between and among States. In view of the above, Regulation 46bis(1bis) should read as follows: In carrying out the environmental impact assessment, the Sponsoring States and the Contractor shall conduct the environmental impact assessment with due regard to the rights, legitimate interests, and duties of the coastal States, including by maintaining consultations and a system of prior notification in accordance with regulation 4. However, it appears arbitrary to limit the consultation and participation of coastal States to environmental impact assessments. The complexity of exploration and exploitation activities requires a more active and present role for coastal States, as grave and imminent danger to their coastlines and interests does not cease to exist at a stage when the activities have not yet begun. Therefore, Regulation 44(1)(a)(iv) should include the following reference, which underscores the need for coastal States that are potentially most affected by mining activities in the Area to participate and be heard throughout the activities. It may read as follows: Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation, including through the participation and consultation of Potentially Most Affected Coastal States and other Stakeholders, as well as the prompt public release of environmental data and information at regular intervals and in an accessible format through the Authority's website.