

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29<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:**

President's Text

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

Federal Republic of Germany

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

Schedule

**Red text** is in original draft; **blue text** indicates Germany's textual proposals

**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.**

**Schedule [President's Text]**

**Use of terms and scope**

**"Best Available Scientific Knowledge [Evidence] [Information]"** means the scientific information and data accessible and attainable that, in the particular circumstances **is accurate, reliable, and relevant**, ~~and is of good quality and is objective, within reasonable technical and economic constraints,~~ and is based on internationally recognized scientific practices, standards, technologies and methodologies, **including peer review**.

**"Best Available Techniques"** [IWG ENV] means the [latest stage of development, and state-of-the-art ~~the most appropriate~~ processes], ~~within reasonable technical and economic constraints,~~ [of] facilities or [of] methods of operation that indicate the practical suitability of a particular measure for the **prevention [avoidance prevention]**, reduction and control of pollution and the protection of the Marine Environment from the harmful effects of **Exploitation** activities **in the Area**, taking into account the guidance set out in the applicable ~~Standards and~~ Guidelines.]

**Alt. 1 ["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:

(a) 'techniques' includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;

(b) 'available techniques' means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not

the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator.

(c) ‘best’ means most effective in achieving a high general level of protection of the environment as a whole;]

~~Alt 2. [“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 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.]~~

**“Best Environmental Practices”** [IWG ENV] means the application of the most appropriate combination of environmental control measures and strategies, ~~[based on the Best Available Scientific Information and Best Available Technology which] [that]~~ will change with time in the light of improved knowledge, understanding or technology, ~~[as well as the incorporation of the relevant traditional knowledge of Indigenous Peoples and local communities]~~ taking into account the ~~[guidance set out in the]~~ applicable ~~[Standards and]~~ Guidelines ~~[including traditional knowledge and international best practices].~~

~~[handled by the IWG ENV].]~~

~~“Best Archaeological Practices” means (as defined by the 2001 UNESCO Convention) those practices designed to: encourage responsible and non-intrusive public access to underwater cultural heritage in accordance with Articles 2.5 and 2.10 of the Convention; increase public awareness, recognition and protection of heritage; promote the Convention and the establishment of national legal frameworks for protection; support scientific research in accordance with the Convention and the Rules concerning activities directed at underwater cultural heritage annexed to it, and capacity building in this regard; and promote the appropriate conservation of heritage.]~~

**“Best Archaeological Practices”** means (as defined by the 2001 UNESCO Convention) those practices designed to: encourage responsible and non-intrusive public access to underwater cultural heritage in accordance with Articles 2.5 and 2.10 of the Convention; increase public awareness, recognition and protection of heritage; promote the Convention and the establishment of national legal frameworks for protection; support scientific research in accordance with the Convention and the Rules concerning activities directed at underwater cultural heritage annexed to it, and capacity building in this regard; and promote the appropriate conservation of heritage.]

**“Contamination”** means the presence of an impurity where a pure or contaminant-free medium would be expected; the contaminant can be the result of human activity or naturally occurring.

**“Contract Area”** means the part or parts of the Area allocated to a Contractor under an exploitation contract and defined by the coordinates listed in schedule 1 to such exploitation contract.

~~“Contractor” means a contractor having a contract in accordance with Part III and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.~~

**[Alt “Contractor”** means a party to an exploitation contract (other than the Authority) in accordance with Part III of these regulations] ~~[and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.]~~

**“Cumulative Environmental Effect”** [IWG ENV] ~~[means any consequences in the Marine Environment arising over time from the conduct of Exploitation~~

activities or in combination with other stressors and activities in the same area, including those not regulated by the Authority.} In case of cumulative effects, the combination of all effects in the same area may be more severe than the sum of its parts.

**“Ecosystem Approach”** [IWG ENV] means a comprehensive, integrated and interdisciplinary approach to the management of human activities based on the Best Available Scientific Knowledge [Information Evidence] that accounts for marine ecosystems and their dynamics, in order to achieve ecosystems’ conservation and sustainable use of, and the avoidance of interference with, the ecological balance of the marine environment to balance ecological, social and governance principles at appropriate temporal and spatial scales in a distinct geographical area to achieve ecosystem conservation and sustainable resource use. Scientific knowledge and effective monitoring are used to acknowledge connections, integrity and biodiversity within an ecosystem along with its dynamic nature and associated uncertainties. The ecosystem-based approach recognizes coupled socio-ecological systems, with stakeholders involved in an integrated and adaptive management process where decisions reflect societal choice.

**“Effect”** is the consequence or outcome of an action or activity during the project; it is typically broader and more functional than an impact.

**“Effective Protection”** [handled by the IWG ENV] means achieving the Authority’s Strategic Environmental Goals and Objectives pursuant to Regulation 44ter, the regional environmental objectives, environmental thresholds and the requirements of Regulation 13(9).

**“Environmental Effect”** [IWG ENV] means any [material] consequences in the Marine Environment, [including baseline studies for Underwater Cultural Heritage,] arising from the conduct of Exploitation activities under an exploitation contract, [whether][being] positive, [negative], direct, indirect, temporary or permanent, or [c]Cumulative environmental effect arising over time or in combination with other effects or impacts stressors and activities in the same area, including those not regulated by the Authority.

~~[Alt 1. “Environmental Effect” [IWG ENV] means any material consequences in the Marine Environment arising from the conduct of Exploitation activities, whether positive, negative, direct, indirect, cumulative, temporary or permanent.]~~

**“Environmental Impact”** [IWG ENV] means [changes (physical and or chemical) to the environment (marine or air) resulting from Exploitation activities under an exploitation contract.]

**Strategic Environmental Goals and Objectives** means the goals pursuant to Regulation 44ter(6) and the objectives pursuant to Regulation 44ter(7).

~~“Good Industry Practice“ “ [IWG ENV] [“Best Industry Practice”] means the exercise of that 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 and includes meeting the performance requirements under any Rules of the Authority, and relevant Standards, [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]~~

Alt 1. 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.

**“Guidelines”** means ~~such documents that provide guidance [support on the implementation of the Regulations] on technical and administrative matters, issued by the organs of the Authority/[Commission and the Secretary-General, respectively] pursuant to regulation 95. [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. Guidelines are generally considered as recommendatory].~~

~~[Alt “Guidelines” means a document that supports 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].~~

**“Impact”** is the influence of an action or activity on inter alia the biological, chemical, or physical environment, or sociocultural or economic values.

**“Impact area”** means the zone or region on the seafloor and in the water column subject to measurable effects from activities under an exploitation contract related to one or several mining area(s).

**“Impact reference zone”** (or “IRZ”) [IWG ENV] means a zone designated within the Contract Area [in accordance with Annex XX to these regulations] that is representative of the environmental characteristics of the Contract Area, is predicted to be impacted by mining activities, and will be used to assess the effects of ~~activities under an exploitation contract~~ ~~Exploitation~~ on the marine environment, including by way of comparison with the Preservation reference zones.

~~[“Intangible Cultural Heritage” [handled by the IWG ENV] means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage (as defined by the UNESCO 2003 Convention for the safeguarding of the Intangible Cultural Heritage).] [“[handled by the IWG ENV]~~

[“Intangible Cultural Heritage” [handled by the IWG ENV] means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage (as defined by the UNESCO 2003 Convention for the safeguarding of the Intangible Cultural Heritage).]

**“Marine Environment”** [IWG ENV] includes the physical, chemical, ~~[oceanographic]~~ geological, genetic, and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), ~~[the underwater cultural heritage] [the underwater cultural heritage],~~ the waters of the seas and oceans and the airspace above those waters, ~~[species, biodiversity, ecosystems,]~~ as well as the seabed and ocean floor and subsoil thereof.

**“Mining Area”** means the part or parts within the Contract Area ~~[from which minerals will be extracted, as],~~ described in a Plan of Work, as may be modified from time to time in accordance ~~with~~ these regulations.

**“Mitigate”** and **“Mitigation”** ~~[means acting/an action or activity intended to remedy, reduce or offset known potential~~ ~~potetional~~ negative impacts to the environment. These occur in a strict hierarchy] [] ~~includes:~~

(a) Avoiding an ~~Environmental E~~ffect altogether by undertaking or not undertaking a certain activity or parts of an activity;

(b) ~~For Environmental Effects that cannot be avoided, m~~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) **For Environmental Effects that cannot be avoided or minimised** ~~Rectifying~~ the effect by repairing, rehabilitating or restoring the affected Marine Environment; and

(d) **For Environmental Effects that cannot be avoided, minimised or rectified,** ~~r~~Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity;-

~~——— (e) Offsetting, only as a last resort.]~~

**“Rehabilitation”** [IWG ENV] [occurs when an ecosystem recovers certain characteristics of, or resemblance to, its natural state, such as the presence of certain all previous species, functions or services, without necessarily aiming at exhaustiveness.]

**“Rules of the Authority”** means ~~[the Convention], [the Agreement]~~ ; these regulations and other rules, regulations and procedures of the Authority ~~[including Standards,] and Guidelines~~ **[decisions of the Council or Assembly of the Authority, and any other ISA instruments expressed as being binding upon Contractors]** as may be adopted from time to time.

**“Serious Harm”** [IWG ENV] ~~means any effect from activities in the Area on the Marine Environment which represents a [n [unlawful]] significant adverse change in the Marine Environment determined according to the rules, regulations and procedures adopted by the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific [Evidence] [Information].~~

**[Alt. “Serious Harm to the Marine Environment”** means an Environmental Effect that, individually in combination or cumulatively meets any of the following criteria:

(a) it is not likely to be redressed through natural recovery within a reasonable period;

(b) it impairs the ability of affected populations to replace themselves;

(c) it degrades the long-term natural productivity of habitats or ecosystems;

(d) causes, on a more than temporary basis, a significant loss of species richness or biological diversity, including community structure, genetic connectivity among populations, ecosystem functioning and ecosystem services on the seabed, at the sea surface, and in midwater and in the benthic boundary layer, or habitat; or

(e) **criteria for significance contained in the relevant Regional Environmental Management Plan, or Standards.]**

~~“Standards” means such technical and other standards and protocols, including performance and process requirements, adopted pursuant to regulation 94. [Standards have to be considered as mandatory.]~~

~~[Alt.1 “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”.]~~

**[Alt.2. “Standards”** means such documents adopted by the Authority pursuant to regulation 94.]

**“Test mining”** means an in situ testing of the integrated system of all equipment and all related processing steps (including collector, riser system and release systems) of exploitation activities, at a scale that allows meaningful upscaling of results, in a contract area under technical, spatial and temporal conditions that

provide evidence in support of the application for a Plan of Work for Exploitation, and assist the Commission and the Council in its evaluation of the application against the criteria contained in Regulation 13 and 15.

**“Ultimate Beneficial Owner”** means each individual who ultimately owns or controls, directly or indirectly and legally or beneficially, shares, capital, a right to profits or voting rights of the Applicant or any individual who otherwise exercises control over the management of the Applicant.

~~[“Underwater Cultural Heritage”[[IWG ENV)].] means all traces of human existence having a cultural, historical or archaeological character (as defined by the UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage) including, but not limited to all objects of an archaeological and historical nature found in the Area (which must be treated in accordance with Article 149 of the Convention), and Intangible Cultural as well as paleontological objects (fossils).~~

[“Underwater Cultural Heritage”[[IWG ENV)].] means all traces of human existence having a cultural, historical or archaeological character (as defined by the UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage) including, but not limited to all objects of an archaeological and historical nature found in the Area (which must be treated in accordance with Article 149 of the Convention), and Intangible Cultural as well as paleontological objects (fossils).

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

- General comment: The Regulations and the Schedule should ensure they apply not only to exploitation activities but to all activities conducted under an exploitation contract, which can include exploration or test mining. Germany suggests amending the Schedule accordingly, as we propose in a number of places.
- Germany is wondering why references to underwater cultural heritage seems to have been deleted from the Schedule and strongly argues in favour of retaining the definitions of “Underwater Cultural Heritage”, “Intangible Cultural Heritage”, and “Best Archeological Practices”, which are based on existing international law. We propose to await the outcome of the intersessional working group with respect to any further terms that may need defining.
- BEST ENVIRONMENTAL PRACTICES: Germany welcomes most of the amendments and the express link to Best Available Scientific Information, Best Available Technology, and traditional knowledge. For further comments, see below under Good Industry Practice.
- BEST AVAILABLE TECHNIQUES: Germany proposes some amendments, inter alia to ensure that BAT is not limited to exploitation activities but also applies to exploration activities under an exploitation contract. We prefer the original version or Alt.1, but do not support Alt.2.
- CONTRACTOR: Germany prefers the ALT version, which appear to be more legally specific, describing the Contractor as a party to the Contract.
- EFFECT: We propose to use the definition currently used in ISBA/27/C/4.
- GOOD INDUSTRY PRACTICE: Germany prefers the ALT version. In our view, a clearer distinction is needed on the usage of different but related terms used throughout the regulations, such as Best Environmental Practice, Best Available Scientific Information, Best Available Technology and Good Industry Practice. In our view, Best Environmental Practices, is a standard required by the ISA from Contractors (and sponsoring States) in delivering their environmental obligations under the Regulations and should encompass use of Best

Available Scientific Evidence/Information, and Best Available Techniques and this should be clear from the definition of BEP in the Schedule. So that each time 'BEP' is used in the Regulations, there is no need to add 'BASE/BASI' or 'BAT' alongside.

Whereas 'Good Industry Practice' represents a threshold of reasonableness within the context of the range of abilities and practices within the sector. GIP should be used in the Regulations each time there is a need to hold the Contractor to perform its functions with due diligence and reasonable care. GIP should not encompass BEP as they are separate standards that should be applied independently.

- **GUIDELINE:** Germany proposes to delete some of the detail in the definition of GUIDELINES as it appears unnecessary, and Germany cautions against insertions in that attempt to have operative effect. The Schedule should be for defining the term only. Therefore, we recommend the Schedule plainly describe Guidelines as meaning 'documents issued pursuant to regulation 95'.
- **MITIGATE:** Germany proposes to delete any reference to offsetting as that remains scientifically not feasible in the deep ocean, as demonstrated in the literature.<sup>1</sup>
- **RULES OF THE AUTHORITY:** Germany supports the suggested amendments as reflected. The insertion 'including Standards' suggests that Standards would be among the RRP's of the ISA, which we support. We note that this is consistent with the recommendation of the LTC that Standards are RRP's. To avoid confusion, we suggest that any reference across the Regulations to 'Rules as well as Standards' (or variations thereof) should be adjusted to not mention Standards separately.
- **STANDARDS:** Germany prefers ALT.2 which refrains from limiting the scope of Standards and from discussing the legal effect of Standards in the Schedule, as that should be done in the Regulations themselves.
- **ULTIMATE BENEFICIAL OWNER:** Germany supports the inclusion of this definition.

---

<sup>1</sup> Niner HJ and others, 'Deep-Sea Mining With No Net Loss of Biodiversity—An Impossible Aim' (2018) 5 *Frontiers in Marine Science* 53, available at <https://www.frontiersin.org/articles/10.3389/fmars.2018.00053/full>