

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION: COUNCIL - PART III

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: IWG Environment

2. Name(s) of Delegation(s) making the proposal: This restructuring text proposal was co-led by Germany, Netherlands and the United Kingdom, with drafting assistance from the International Marine Minerals Society, Ireland and Norway, and is supported by the African Group, Germany, IMMS, India, Ireland, Netherlands, Norway, Pew Charitable Trusts, Russia, United Kingdom, and the United States.

3. Please indicate the relevant provision to which the textual proposal refers. Part IV Section II, Annex IIIbis, 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. Please see rationale and annexes submitted.

5. Please indicate the rationale for the proposal.

A. Summary: This proposal focuses on the allocation of EIA provisions to their appropriate and logical locations across the Regulations, Annexes, Standards and Guidelines (the Mining Code), based on criteria agreed by this group (see Section C & Annex I). This is to increase usability of the EIA provisions for all parties, and allow Council discussions to focus more on content than structure of EIA provisions moving forward.

The group has moved detailed content from Part IV, Section II to the Annexes, and from the Annexes to the Standards (and occasionally Guidelines). The next steps should be to consider how to merge and align the reallocated content of the EIA Annexes, Standards and Guidelines.

B. Process: This work followed a 3 step-approach 1) devising a logical order to the EIA regulations (starting with [IWG EIA restructure report](#), IWG Environment facilitator redrafting and then [UK-led joint text proposal](#)), 2) agreeing criteria (‘the Placement hierarchy’) on locating content in the Mining Code, and applying such criteria to propose reallocation of provisions, (this report¹) 3) how to merge and align the reallocated content, in particular where in the Standards content from Annex IV should move (future work of this group from Jan 2023, and also for wider Council consideration).

¹ NB: The group members’ substantial comments and or amendments to the current drafting of the content of the different provisions are not included in this report, which is about restructuring only.

The drafting group met virtually three times and worked on sections in between these meetings. The group reached out to parties who indicated their interest on the Council floor or via email contact to the co-leads. Co-leads asked interested parties for comments on establishing the criteria for placement of content in the Mining Code, as well as any specific views on movement of EIA provisions. Interested parties were given the opportunity to review the outcomes in a final draft and indicate their support for this proposal.

C. Criteria for allocating provisions (the Placement Hierarchy): The group undertook an extensive discussion regarding the nature of each level of the Placement hierarchy to agree criteria that should be applied when deciding where to place EIA content (Annex I). This discussion included consideration of comments received on this matter from interested parties. The criteria agreed are useful not just to EIAs, but to the wider discussion across Part IV, and encourage Council to consider this further.

D. Proposal to move EIA content to appropriate place in the Mining Code:

Using the agreed Placement hierarchy (Annex I) the group proposed movement of many elements in Part IV, Section II and Annex IV to a more appropriate location in the Mining Code²:

a) Regulations > Annexes: Propose moving the content of Regulation 47 ter (bis) alt Scoping Report, Paragraph 4 to Annex IIIbis. Annex IIIbis will be supplementary to and provide additional detailed information on the requirements for the Scoping Report in Part IV, Section II, in particular Regulation 47 ter (bis) alt Scoping Report (see Annex II).

Propose moving the content of Regulation 48 alt Environmental Impact Statement, paragraph 4 to Annex IV (see Annex II & III). Annex IV will be supplementary to and provide additional detailed information on the requirements for an Environmental Impact Statement in Part IV, Section II, including Regulation 47 alt (Environmental Impact Assessment Process), 47 bis alt. (47 ter) (Environmental Impact Assessment), and in particular Regulation 48 alt (Environmental Impact Statement).

b) Retain in Annexes: The group recommends many elements of Annex IV Environmental Impact Statement should be retained in Annex IV. Annex III of this document presents the content moved from Regulation 48alt on the left hand side, and the content already within Annex IV to be retained in Annex IV on the right hand side. Annex IV should contain the binding requirements of what must be included in an EIS, but it should not be a formatting template. The next step will be to merge and align the two columns to create Annex IV.

c) Annexes > Standards and Guidelines: The group proposes some content in Part IV, Section II should be moved to the Standards due to its more technical nature, and propose that a large proportion of Annex IV (EIS) should move into Standards, and some to Guidelines. (see Annex II and III of this document). Like regulations and their annexes, Standards are still requirements for undertaking EIAs and preparing EIS's, but contain elements that are more detailed or technical,

² The group worked on the alt versions of each regulation in Section II which were recommended by the IWG Environment facilitator as the version to work on in Part III ISA Council 28th Session (Oct-Nov '23 - ISBA/28/C/IWG/ENV/CRP.3*).

and/or are more likely to be updated in light of new information over time; Guidelines are also more detailed, technical and likely to need to be updated in light of new information, but are recommendatory in nature.

E. Next steps: The next step will be to look at each moved element individually and decide which existing or new draft Standard or Guideline it should be specifically moved into, and how it can be merged and/or aligned with the existing content of the draft Standards and Guidelines. We note Council has reviewed the regulations and annexes, but not yet the draft Standards and Guidelines, so where there is any misalignment between the regulations and the Standards and Guidelines, the regulations take priority unless otherwise decided on a case-by-case basis in further discussions by Council. At this stage, the group recommends the highlighted elements in this proposal will need to be moved to the following Standards and Guidelines:

- Draft Standards for the environmental impact assessment process ([ISBA/27/C/4](#))
- Draft Guidelines for the environmental impact assessment process ([ISBA/27/C/4](#))
- Standards for the preparation of environmental impact statements (does not yet exist, but follows format established for EIA S&Gs above)
- Draft Guidelines for the preparation of environmental impact statements ([ISBA/27/C/5](#))

At this stage, the group considers the majority of the content proposed in this report should be moved to a new Standard on the preparation of environmental impact Statements, following the format established for the Standards and Guidelines for the environmental impact process. This group aims to continue working on this next step after the submission of this report.

F. Future considerations for usability: Finally, the group notes that one important policy for this group was the need to ensure that the EIA regime is easy to understand and follow, to enable compliance with its requirements by both contractors undertaking EIAs, and the ISA in reviewing them. The splitting of requirements and guidance across a regulatory hierarchy is normal (as currently envisaged for the Mining Code), however for ease-of-use and therefore compliance purposes, the group recommends a ‘consolidated document’ be produced once the regulations, annexes, Standards and Guidelines are agreed. This document would simply copy-paste the EIA regime as a whole into a single, ordered document (consolidate) and be additional to the Mining Code purely as a reference document. It would not make any changes to text of the Mining Code, and be for presentation and therefore usability purposes only. For example:

Copy/paste requirement(s) in Regulation
Copy/paste related requirement(s) in Annex
Copy/paste related requirement(s) in Standard
Copy/paste related recommendation(s) in Guidance

Annexes to this report:

Annex I: placement hierarchy criteria

Annex II: CLEAN Full restructuring proposal (clean text with deletions)

Annex III: Outline of merging/alignment task (next steps) to undertake on Annex IV

Annex IV: Full restructuring proposal (marked up highlighted text without deletions)