

**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/President's text

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

Norway

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

46ter and 18bis

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.

Delete Regulation 46ter paragraph 5:

~~5. The Contractor shall allocate sufficient resources and assign roles and responsibilities to implementation of the Environmental Monitoring and Management Plan in relation to the relevant risks and impacts.~~

Add to Regulation 18bis, new paragraph 4:

4. The Contractor shall allocate sufficient resources and assign roles and responsibilities to implementation of their obligations under these Regulations.

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

Norway suggests moving Regulation 46ter paragraph 5 to Regulation 18bis as a new paragraph 4. The text has been slightly amended to make the obligation applicable throughout the process.

Norway has also proposed a new structure for the provisions relating to Environmental Monitoring, including Regulation 46ter as a new Regulation 50, please see separate submission.

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DR 46, 46bis, 46 ter, 51 and 52, as well as placement of 49, 50 and 53.

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.

-Section 3 Environmental Monitoring

Regulation 46 bis/ [Regulation 49]

Environmental monitoring

1. A Contractor shall, ~~pursuant to its Environmental Management and Monitoring Plan required under Regulation 48 and~~ in accordance with the Standard ~~on environmental monitoring programmes and other applicable Standards~~, and taking account of the Guidelines observe, evaluate and analyse, in accordance with Best Available Scientific information, Best Environmental Practices, and Best Available Techniques, the environmental thresholds contained in the Standards, and risks to Environmental Effects on the Marine Environment arising from Exploitation. Surveillance

2. In accordance with this Section 3, the Contractor shall

(a) prepare and submit an Environmental Management and Monitoring Plan;

(b) develop, implement and maintain an Environmental Management System;

(c) Monitor and report on the compliance with the Environmental Management and Monitoring Plan; and

(d) Conduct performance assessments of the Environmental Management and Monitoring Plan.

3 Monitoring shall be conducted during all stages of the mining operation, to determine whether it is having or likely to have harmful effects on the Marine Environment until satisfactory completion of a Closure Plan.

~~2.— The Contractor shall establish and implement an environmental management and monitoring programme in accordance with the approved [environmental monitoring plan Environmental Management and Monitoring Plan] and in accordance with the Standard on Monitoring Programmes and cooperate with, the Authority and the Sponsoring State or States as well as share findings and results of such programmes with the Authority for [wider dissemination public access].~~

~~[2.Alt. omitted]~~

~~3.— In addition to the Monitoring conducted by the Contractor pursuant to Paragraph 2 The Environmental Management and Monitoring Plan shall cover all stages of the mining life cycle, and on submission for approval contain a monitoring programme for at least the first [five] [seven] years of [the mining project, commercial production] to be conducted by independent experts and in compliance with the applicable Standards and taking account of the relevant guidelines.~~

~~[3 .Alt. omitted]~~

~~4.— The Contractor shall report annually in writing, in accordance with these regulations, to the Secretary General on the implementation and results of the Environmental Management and Monitoring Plan and the environmental monitoring programme referred to in paragraph 2, in accordance with Regulation 38, paragraph 2(g). The [Secretary General Contractor] shall [release publicly submit to the Secretary General] [submit to the Secretary General] environmental data and information in the required standardized format, in real time or at [monthly intervals] [annually], [if possible] consistent with best scientific practices, [environmental data and information in the required standardized format], and in accordance with the applicable Standards, and taking into account the applicable Guidelines. The Secretary General shall release the environmental data and information publicly in accordance with regulation 92bis. The Secretary General shall transmit annual reports to the Commission for its consideration pursuant to article 165 of the Convention and publish them pursuant to Regulation 38(3).~~

45. In implementing paragraph 1, the Sponsoring State and Contractor shall consult, with any adjacent coastal State [across whose limits of national jurisdiction lie] with a view to avoiding infringement of their rights and legitimate interests, in accordance with Regulation 4.

Regulation 46 ter/ [Regulation 50]

Environmental Management and Monitoring Plan

1. Each applicant or Contractor for Exploitation shall prepare an Environmental Management and Monitoring Plan in accordance with this regulation and Annex VII.

2. The purpose of an Environmental Management and Monitoring Plan is to manage and confirm that observed Environmental Effects meet Standards on environmental quality objectives and environmental performance for the mining operation. The plan shall address any issues that arise from the Environmental Impact Statement and will set out commitments and procedures on how the Environmental Effects of the mining operation will be monitored and mitigated including on pollution control and Mining Discharge in Regulations 53bis49 and 53ter0.

[3. The Environmental Management and Monitoring Plan shall include all elements and matters prescribed by the Authority in Annex VII to these regulations and shall:

~~—— (a) Be based on the Environmental Impact Assessment and the Environmental Impact Statement;~~

~~—— (b) Be prepared in accordance and consistent with the applicable Regional Environmental Management Plan,~~

~~—— (c) Be prepared in accordance and consistent with the applicable Standards developed in accordance with Regulations 45 and 94 and taking account of the applicable Guidelines, as well as Good Industry Practice, Best Available Scientific information, Best Environmental Practices and Best Available Techniques;~~

~~(d) Be prepared in accordance and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan;~~

(ae) Incorporate site-specific environmental objectives and environmental performance standards, which are compatible with and designed to achieve the environmental policy and objectives of the Authority and applicable Standards;

(bf) Incorporate measurement criteria, ~~thresholds of the Authority defined in the~~ in accordance with the applicable Standard and reflect its methodology to determine whether the environmental quality objectives are being met and that the operation is compliant with applicable environmental Standards and other Rules of the Authority,

(cg) Incorporate any recommendations made by the Commission, and approved by the Council, in its consideration of the Environmental Impact Statement, including commitments and procedures on;

- (i) how the ~~environmental impacts~~ Environmental Effects of Exploitation~~the mining operation~~ will be monitored ~~in accordance with Regulation 46bis, in~~ the Environmental Management and Monitoring Plan EMMP Standard and the applicable Monitoring Standard,
- (ii) how the Mitigation measures, including pollution control and Mining Discharge in regulations ~~53bis~~⁴⁹ and ~~50~~^{3ter}, will be implemented,
- (iii) how the effectiveness of such measures will be monitored,
- (iv) how Preservation Reference Zones and Impact Reference Zones, designated in accordance with Annex Xter, will be utilised and implemented,
- (v) what the management actions and responses will be to the monitoring results and new knowledge
- (vi) what management and reporting systems will be adopted and followed, and;
- (vii) how continual improvement will be promoted, including by testing assumptions and predictions made in the Environmental Impact Statement, improving environmental knowledge, and reducing residual uncertainties remaining from the environmental impact assessment process.]

~~3bis—The Contractor shall conduct monitoring for the entire duration of exploitation. In addition to the Monitoring required to be environmental monitoring programme performed by the Contractor, the Environmental Management and Monitoring Plan shall contain a supplementary monitoring programme for at least the first seven years of commercial production mining operations, to be conducted by competent independent experts and in compliance with the applicable Standards.~~
The Contractor shall conduct monitoring for the entire duration of the mining operation and comply with any post-closure monitoring requirement according to Regulations 59-61 and the applicable Standard.

~~4.—The Contractor shall provide information on the implementation and compliance of the Environmental Management and Monitoring Plan pursuant to Regulations 51 and 52 in its annual report in accordance with regulations 38, paragraph 2(g), and 46bis, paragraph 4, for evaluation by the Legal and Technical Commission, as well as environmental data and information for publicly release, in an accessible format, consistent with Best Scientific Practices monitoring data and information at a regular basis and where practicable in real time or on a monthly basis.~~

5. The Contractor shall allocate sufficient resources and assign roles and responsibilities to implementation of the Environmental Monitoring and Management Plan in relation to the relevant risks and impacts.

Regulation 46/ ~~[Regulation 50bis]~~

Environmental management system

1. A Contractor shall develop, implement and maintain an Environmental Management System, [with the purpose of preserving and protecting the Marine Environment from the impacts of the activities in the Area] ~~in compliance with the [Convention, the Agreement, and the Rules of the Authority.] Standards and taking account of the relevant Guidelines and in accordance with [Best Available Science and Scientific Information] [Best Environmental Practices, and] Good Industry Practice and internationally recognized standards.~~

2. An Environmental Management System shall, inter alia:

(a) Deliver the Authority's environmental objectives in the Contract area including those reflected in the applicant's Environmental Management and Monitoring Plan, and ~~taking into~~ the applicable Regional Environmental Management Plan as well as any additional objectives as set by the Contractor or Sponsoring State.

(b) Be reviewed [to reflect the development of the Rules of the Authority] and undergo [periodical] [annual] audits by an independent recognized and accredited international or national organization, in accordance with applicable Standards and Guideline, the Convention, the Agreement, and other relevant international law; and

(c) Facilitate effective reporting to the Authority in connection with environmental performance, pursuant to Regulations 33, 34, 38, 39, and 52.

[(d) Include the results of the audit, and any in the Contractor's annual reports and the performance assessment of the Environmental Management and Monitoring Plan under Regulation 52.]

3. All changes made to a Contractor's Environmental Management System, for example resulting from reviews and audits, [or any development of the Rules of the Authority], shall be reflected in the Contractor's annual reports and in the performance assessment of the Environmental Management and Monitoring Plan under Regulation 52. A proposed material change to a Contractor's Environmental Management System shall be treated the same as a modification of a Plan of Work, pursuant to Regulation 57.

Regulation 51

Compliance with the Environmental Management and Monitoring Plan

1. A Contractor shall, in accordance with these regulations, implement and adhere to its Environmental Management and Monitoring Plan ~~and these regulations~~, and shall:

(a) Monitor continuously in accordance with the applicable Standard, on Environmental Monitoring ~~release~~ ~~submit environmental monitoring data [publicly], in accordance with regulation 46terbis, paragraph 4 in an accessible format consistent with best scientific practice, in real where possible or at monthly intervals on a monthly basis and report annually under regulation 38 (2) (g) on~~ the Environmental Effects of its activities on the Marine Environment, including a comparison between baseline data and monitoring data, as well as a comparison between baseline data and threshold values, to document the actual effects on the Marine Environment and manage all such effects as an integral part of its Exploitation activities as set out in the relevant Standards and taking into account the relevant Guidelines referred to in regulation 45;

~~(b) The Contractor shall Report annually in writing, in accordance with these regulations, to the Secretary-General on the implementation and results of the Environmental Management and Monitoring Plan in accordance with Regulation 38, paragraph 2(g). The [Contractor] shall [submit to the Secretary General] environmental data and information in the required standardized format, in real time or at [monthly intervals] [annually], consistent with best scientific practices, and in accordance with the applicable Standards, and taking into account the applicable Guidelines. The Secretary General shall release the environmental data and information publicly in accordance with regulation 92bis. The Secretary-General shall transmit annual reports to the Commission for its consideration pursuant to article 165 of the Convention and publish them pursuant to Regulation 38(3).~~

~~(c) Provide information on the implementation and compliance of the Environmental Management and Monitoring Plan pursuant to Regulations 51 and 52 in its annual report in accordance with regulations 38, paragraph 2(g), and 46bis, paragraph 4, for evaluation by the Legal and Technical Commission, as well as environmental data and information for publicly release, in an accessible format, consistent with Best Scientific Practices monitoring data and information at a regular basis and where practicable in real time or on a monthly basis.~~

~~(db) Apply best endeavours to improve~~ Implement all applicable mitigation and management measures to ensure the effective protection of the Marine Environment from harmful effects, as set out in the [relevant] Standards, inter alia those referred to in regulation 45, and taking into account relevant Guidelines referred to in regulation 45; and

~~(ee)~~ Monitor compliance with, assess, and maintain the currency and adequacy of the Environmental Management and Monitoring Plan and its Environmental Management System during the term of its exploitation contract including through management review under

regulation 46, performance assessment under regulation 52, and with modification to the Plan of Work under regulation 57 where required.

Regulation 52

~~Review of the~~ Performance assessments of the Environmental Management and Monitoring Plan

1. A Contractor shall conduct performance assessments of their Environmental Management and Monitoring Plan. The Commission shall review the performance assessments of the Environmental Management and Monitoring Plan ~~undertaken by a competent and independent auditor hired by a Contractor~~ in accordance with the relevant Standards and taking account of the relevant Guidelines. [In conducting such a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall ~~ensure~~ assess:

(a) The compliance of the mining operation with the mitigation and management measures included in the Environmental Management and Monitoring Plan, as a part of the approved Plan of Work;

(b) The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto;

(c) ~~The conformity of That~~ The conformity of the plan with the plan measures included in the Environmental Management and Monitoring Plan and take into consideration with the applicable Regional Environmental Management Plan, ~~if any~~

(d) The accuracy of the findings of the Environmental Impact Assessment as set out in the Environmental Impact Statement.

(e) The changes in knowledge, technology, mining patterns, monitoring techniques and detection capabilities are reflected;

(f) The outcomes of management reviews of the environmental management system are conducted under regulation 46(2)(e); and

(g) Information and data derived from monitoring at the mine site and impact area as well as from any Exploitation by other Contractors is provided.

[(g)bis The implementation report of the Environmental Management and Monitoring Plan, as well as the comments and evaluation from the Commission in accordance with Regulation 48 above.

[(g)ter Any finding of the Inspectors, especially those findings that indicate the non-compliance of the Contractors towards the submitted and approved Environmental Monitoring and Management Plan, as well as the recommendations on measures to be taken as shown in the inspection result.]

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan and shall occur at least every twenty-four months

2bis. An ad hoc performance assessment may be requested by the [Council] [Compliance body] following:

- (a) An Incident ~~or Notifiable~~;
- (b) Receipt of an unsatisfactory annual report;
- (c) Issuance of a compliance notice or
- (d) When deemed necessary by the Council in response to third-party ~~or whistle-blower~~ information submitted to the Council.

3. A Contractor shall hire a competent and independent auditor to compile and submit a performance assessment report to the Secretary-General in accordance with, and in the format set out in, the relevant Guidelines.

4. The Secretary-General shall publish the Performance Assessment Report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholder's comments to the Commission [and Compliance Committee / Inspector-General]. The Commission shall in consultation with the [Compliance Committee / Inspector-General] review ~~a the~~ performance assessment report and any stakeholder comments received to it at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. ~~If the Commission does not possess sufficient expertise amongst its members, it shall consult independent experts to review the performance assessment.~~ The Commission should, where necessary and appropriate, consult external experts to review the performance assessment. ~~The Secretary-General shall publish the report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholders' comments to the Commission for review.~~

5. Where the Commission upon review of the report and any Stakeholder comments received in relation to it, and upon the advice of the [Compliance Committee / Inspector-General] considers the performance assessment to be unsatisfactory or the report submitted to be inadequate, ~~in relation~~ to the applicable Standards, relevant Guidelines and the Environmental Management and Monitoring Plan, the Commission may require, after providing the Contractor with a reasonable opportunity to address any inadequacies, the Contractor to:

- (a) Submit any relevant supporting documentation or information requested by the Commission including a revised report; or

- (b) Appoint, at the cost of the Contractor, an independent competent person to conduct the whole or part of the performance assessment and to compile a report for submission to the Secretary-General and review by the Commission.

6. Where the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor consistent with the applicable Standards Guidelines, ~~the Commission may procure~~, at the cost of the Contractor, an independent competent person to conduct the performance assessment and to compile the report.

7. Where, as a result of paragraphs 5 and 6 above, a revised assessment and report is produced, paragraph 4 above shall apply to the revised assessment.

8. Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor has failed to comply with the terms and conditions of its Environmental Management and Monitoring Plan or that the plan is determined to be inadequate in any material respect, the Commission shall:

(a) Recommend to the Council to issue a compliance notice under regulation 103 or;

(b) Require the Contractor to deliver a revised Environmental Management and Monitoring Plan, taking into account the findings and recommendations of the Commission. A revised plan shall be subject to the process under regulation 11.

9. The Commission shall report annually to the Council on such performance assessments and any action taken pursuant to paragraphs 5 to 8 by it or the Secretary-General. Such report shall include any relevant recommendations for the Council's consideration. Such report shall be published on the Authority's website.

10. The Secretary-General shall inform the Ssponsoring State or States of any action taken pursuant to this regulation.

Section 4 Emergency Response and Contingency Plan, Pollution control, management of waste

Regulation 53 ~~[50bis]~~

Emergency Response and Contingency Plan

[Only changed placement]

Regulation 53bis [Regulation 49 [alt]]

Pollution control

[Only changed placement]

Regulation 53ter [Regulation 50]

Restriction on Mining Discharges

[Only changed placement]

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

Norway suggests a streamlining of the Environmental Monitoring regulations into a new Section 3.

The purpose of the streamlining is to increase the readability of the regulations and to avoid duplication of provisions. The suggestion is that the Regulations should follow a chronological order, with Section 2 containing EIA, which must be conducted before an application of PoW, Section 3 containing Environmental Monitoring, which also contains obligations both before submission of PoW and during activity. Finally, Section 4 would be pollution control, which only contains provisions that govern the activity. Within the sections, Norway suggests the order as presented above. On DR53 Emergency Response and Contingency Plan, Norway suggests discussing where in the REGS this Regulation belongs. Our suggestion for now is to altered the title of Section 4 from previous Section 3.

Regulation 46bis (New number for regulation - Regulation 49): This Regulation should give an overview of the environmental monitoring obligations under the regulations, similar to Regulation 47 alt for the EIA-process. The reference to “Environmental Monitoring Programme” has been deleted. As far as Norway can see, no such programme is established under the Regulations. Paragraph 4 has been integrated to Regulation 51 paragraph 1 (a).

Regulation 46 ter (New number for regulation - Regulation 50): Environmental Management and Monitoring Plan (EMMP) and Environmental Monitoring System (EMS) shall, as we understand, be provided before the approval of the PoW. Therefore, Norway suggests moving these directly under the proposed Regulation 46bis. Since the Regulation on EMS refer to the EMMP, we have chosen the EMMP to be placed before the EMS.

In paragraph 3 subsections (a)-(c) have been deleted, as these are already covered by the proposed Regulation 46bis. Also, (d) is deleted, as we do not see the added value of this subparagraph.

In paragraph 3bis, the reference to “Environmental Monitoring Programme” has been deleted, see explanation under comments to Regulation 46bis.

Paragraph 4 has been integrated into Regulation 51 paragraph 1 (a).

Regulation 46 (New number for regulation - Regulation 50bis): In paragraph 1, reference to Standards, Guidelines and BAT is deleted, as these overlap with Regulation 46bis first paragraph.

Regulation 51: this Regulation has been changed to encompass all provisions on reporting. These have been streamlined in litra (a)-(c).

Regulation 52: in para 1, the reference to independent expert is deleted, as this is in conflict with 6.

These suggestions are solely focused on streamlining these regulations. Norway will provide substantial comments to the individual Regulations in separate submissions.