

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS FOR THE 29TH SESSION: COUNCIL -
PART II

Informal Working Group - Environment

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@isa.org.jm.

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

Submitted by the International Marine Minerals Society (IMMS)

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

The term “Contractor” from the Schedule, from the consolidated draft text (ISBA/29/C/CRP.1) dated 16 February 2024.

3. 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.

“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.~~

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

The definition of Contractor should be limited to the entity that signs the Exploitation Contract with the Authority.

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The terms “Mitigate” and “Mitigation” in the Schedule, from the consolidated draft text (ISBA/29/C/CRP.1) dated 16 February 2024.

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

- (a) Avoiding an Environmental Effect altogether by undertaking or not undertaking a certain activity or parts of an activity;
- (b) For Environmental Effects that cannot be avoided, 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, reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity;~~

~~{(de) Offsetting, only as a last resort.}~~

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

The current definition seems to replicate much of the mitigation hierarchy but adds a tier (d) [which is covered by (c)] and there is a risk of omitting the final tier of offsetting. While offsetting should be considered a last resort option, it is part of the mitigation hierarchy, which is internationally recognised and it is standard practise to consider it when making environmental management decisions. With this in mind, we suggest the definition above.

The regulations are not the place to decide what is or is not feasible with respect to the mitigation hierarchy and a decision now could stifle innovation. The Mitigation hierarchy, and the feasibility of each tier, should be addressed through the EIA/EIS/EMMP. When these undergo review by the LTC and stakeholders, it can be

decided then whether an applicant has sufficiently covered the mitigation hierarchy and if what they are proposing is likely to be successful.

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

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The term “Serious Harm” in the Schedule, from the consolidated draft text (ISBA/29/C/CRP.1) dated 16 February 2024.

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“**Serious Harm**” means any effect from activities in the Area on the Marine Environment which represents a significant adverse change in the Marine Environment determined according to the rules, regulations and procedures of the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific Information [and, where available, relevant traditional knowledge of Indigenous Peoples and local communities].

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

We prefer the original definition (as above) over the Alt. definition.

The Alt definition lacks the concept of scale – which is needed to make the more detailed definition meaningful. (a) of the Alt version in particular is problematic. Most (all) mineral resources, whether found on land or sea, do not “naturally recover” within human timescales.