

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<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:** IWG Environment
  
2. **Name(s) of Delegation(s) making the proposal:** Australia
  
3. **Please indicate the relevant provision to which the textual proposal refers.**  
  
DR 44 - proposed amendments are in green text
  
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**

**General obligations**

1. The Authority, sponsoring States, the Enterprise, Contractors and States competent for vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority shall each, within their respective competence as necessary plan, adopt, implement and modify measures necessary for ensuring effective protection of the Marine Environment, including but not limited to rare or fragile ecosystems, all forms of marine life, as well as the habitat of depleted, threatened or endangered species, from harmful effects directly or indirectly resulting from Exploitation in the Area, including from shipboard dewatering immediately above a mine site of minerals derived from that mine site processing and from transportation of minerals to inland facilities, which may include inland processing in accordance with the Rules of the Authority, Standards and taking into account Guidelines referred to in regulation 45 and the applicable Regional Environmental Management Plan. To this end:

(a) In adopting and keeping under periodic review rules, regulations and procedures, as well as the Standards and Guidelines in accordance with the Convention and the Agreement, the Authority shall:

(i) Apply the precautionary approach principle as reflected in principle 15 of the Rio Declaration on Environment and Development

and the ecosystem-based management approach to the assessment ~~and~~ management and prevention of risk of harm to the Marine Environment from Exploitation in the Area;

(ii) Apply the Best Available Techniques and Best Environmental Practices taking into account the applicable guideline,

(iii) Integrate Best Available Scientific Evidence in decision-making, including all risk assessments and management undertaken in connection with environmental assessments, acknowledging knowledge gaps, and the management and response measures taken under or in accordance with Best Environmental Practices; and

(iv) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation ~~in the Area~~, including through Stakeholder participation and the timely prompt public release of ~~relevant~~ environmental data and information at regular intervals and in an accessible format through the Authority's website.

(iv)bis Take into account the approach that the polluter should ~~in principle~~ bear the cost of pollution, endeavour to promote practices whereby those engaged in exploitation activities bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest.

~~(v) Include Underwater Cultural Heritage in the definition of marine environment. Thus, references to the environment include references to these objects which hereinafter are referred to as underwater cultural heritage (UCH) which has been more precisely defined in the UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage.~~

~~(v)ter Ensure to minimize the direct or indirect in implementing the regulations, act so as not to transfer directly or indirectly damage or the likelihood of damage from one part of the environment to another or transform one type of pollution into another as stated in article 195 of the Convention. This –especially related to avoiding toxic, persistent and bio accumulative substances.~~

(b) In taking all necessary measures to ensure that the Contractor carries out Exploitation in the Area in conformity with the terms of its contract and its obligations under the Rules of the Authority related to the effective protection for the Marine Environment from harmful effects, the Sponsoring State shall, as a minimum, assist the Authority to implement, ~~mutatis mutandis~~, the measures set out under paragraph (a)(i) to (iv) above.

(c) In taking all the necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment ,including the coastline, and of interference with the ecological balance ecosystem structure, function and resilience of the Marine Environment including the coastline, and of interference with the ecological balance of the Marine Environment arising from its

Exploitation in the Area, the Enterprise and Contractors shall ~~implement, mutatis mutandis, the measures set out under paragraph (a)(i) to (iii) above and~~ demonstrate accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation, including through Stakeholder participation and the timely public release of environmental data and information on their respective activities at regular intervals and in an accessible format. In so doing, the Enterprise and Contractors shall apply a priority order to avoid, minimize, mitigate, ~~and~~ remediate, ~~restore, shall Mitigate harm to the Marine environment mitigate, and remediate restore, and as a last resort, offset where agreed, harm to the Mmarine Eenvironment, as well as~~ and adapt the necessary measures to newly ~~emerged-obtained~~ information and data.

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

With respect to the chapeau of sub paragraph (1):

- Australia considers that it is not appropriate to describe Contractors as having a competence. ~~As a result, Australia proposes's preference would be to removing~~ the phrase 'within their respective competence' and replac~~ing~~e it with 'as ~~necessary~~'.
- Australia also considers that the reference to 'rare or fragile ecosystems' should be preceded by the phrase 'including but not limited to'. ~~In our view, it is preferable to indicate that this is not an exhaustive list~~

With respect to sub paragraph (1)(a)(v):

- ~~Australia supports the inclusion of protection of Underwater Cultural Heritage, including intangible cultural heritage, in the Regulations. However, we consider the protection of underwater cultural heritage should be the subject of separate provisions, rather than being considered as part of the 'marine environment' for the purposes of the Regulations. We are participating in the intersessional work being led by the Federated States of Micronesia to resolve issues around how best to include cultural heritage protections in the Regulations.~~
- ~~Australia supports provisions for the proposition that protection of 'Underwater Cultural Heritage', including intangible cultural heritage, should be in the Regulations. However, we consider underwater cultural heritage should not be included in the definition of the marine environment but dealt with in separate provisions. We are participating in the intersessional work being led by the Federated States of Micronesia to resolve issues around how best to include cultural heritage protections in the Regulations. However, we consider that elaboration of this is best retained in the Schedule, where 'marine environment' is a defined term. As a result, we suggest deletion from Regulation 44 with a view to moving to it to the schedule.~~

With respect to sub paragraph (1)(c):

**Commented [SA1]: Robyn** – note that Belgium agreed with this point. We could seek their co-sponsorship, but I don't think necessary, noting this suggestion is wrapped up with many others and we're running out of time at this point!

**Commented [RF2R1]:** Agree.

**Commented [RF3]:** I've amended this paragraph to reference the intersessional work being led by FSM to come up with provisions that better deal with underwater cultural heritage and intangible cultural heritage as separate concepts, rather than rolling them into the provisions on the marine environment in the Regulations. This work should help to resolve some of the 'muddying' introduced by adding references to Underwater Cultural Heritage into the marine environment protection provisions. I also wanted avoid any misconception that by suggesting deleting this paragraph in DR 44 that we did not support including heritage protections in the Regulations.

And, sorry, but I forgot to put 'track changes' on before I amended it.

**Commented [RF4]:** I've amended this paragraph to reference the intersessional work being led by FSM to come up with provisions that better deal with underwater cultural heritage and intangible cultural heritage as separate concepts, rather than rolling them into the provisions on the marine environment in the Regulations. This work should help to resolve some of the 'muddying' introduced by adding references to Underwater Cultural Heritage into the marine environment protection provisions. I also wanted avoid any misconception that by suggesting deleting this paragraph in DR 44 that we did not support including heritage protections in the Regulations.

**Commented [SA5]: Robyn** – Singapore's view was that this paragraph should be deleted altogether, as there is no need to reference Underwater Cultural Heritage at all as it's not a defined term in UNCLOS and shouldn't be part of the definition of the marine environment. I'd tend to agree with this, but not a super strong view.

I suggest we submit this textual proposal with the deletion at this point, without submitting a separate textual proposal from us in the Schedule to show its move (although I assume the facilitators would pick this up). The discussion could then continue when we get to the Schedule. What do you think?

- Australia considers that the first sentence should refer to 'all the' necessary measures, for consistency with the current drafting of DR49.
- Australia considers the word 'its' should come before 'Exploitation', so that the phrase reads 'arising from its Exploitation in the Area'. This is also for consistency with DR49.
- Australia considers that the phrase 'as a last resort' should not be deleted, as it is preferable to maintain the emphasis that 'offset' is a last resort option in this context. In this regard, and for clarity of drafting, Australia considers the last sentence should read 'avoid, minimise, mitigate, remediate, restore and, as a last resort, offset harm to the marine environment, and adapt the necessary measures to newly obtained information and data'.
- Australia considers that the cross-references to paragraph (a) creates some confusion, as this attempts to impose requirements on the contractor that are currently framed as requirements for the Authority. Noting the suggestion for new Regulation 44(2)(bis) which replicates the requirements in paragraph (1)(a), we suggest the cross-reference be deleted.