

**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:**

Informal Working Group for the Protection and Preservation of the Marine Environment

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

The Pew Charitable Trusts

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

DR 47

**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 47**

**Environmental Impact Assessment Process**

~~1. An applicant or Contractor shall carry out an Environmental Impact Assessment Process on the potential effects on the Marine Environment of the proposed operations and activities.~~

2. The Environmental Impact Assessment ~~Process~~ shall:

- (a) Be based on relevant baseline data that captures temporal, (seasonal and interannual) and spatial variation in accordance with relevant Standards and taking into account relevant Guidelines and the relevant Regional Environmental Management Plan,
- (b) Be carried out by ~~qualified,~~ competent independent experts, ....

3. The Environmental Impact Assessment ~~Process~~ must follow certain procedural steps ~~to having the plan of work assessed~~ and entail the following elements:

- a. A scoping ~~s~~Stage and scoping report in accordance with Regulation 47~~ter~~ to identify and risk assess the anticipated activities and potential impacts associated with the proposed mining operation which are relevant to the ~~Environmental Impact Assessment~~.
- b. An assessment to describe the impacts on the ~~M~~marine ~~E~~environment and Underwater Cultural Heritage and predict the nature and extent of the Environmental Effects of the mining operation including residual impacts, also considering other existing and foreseen mining operations. This includes assessing:...
- c. The Identification of measures envisaged to ~~monitor, Mitigate prevent, minimize control, mitigate or, if possible, offset~~ and manage

Environmental Effects and risks to as low as reasonably practicable, while within acceptable levels in accordance with environmental Standards, including through the development of an Environmental Management and Monitoring Plan,

~~d. The Identification of measures envisaged to remediate, restore, rehabilitate (where possible) the Marine Environment, including through the development and preparation of an Environmental Management and Monitoring Plan,~~

e. An analysis of reasonable alternatives to the planned activity ~~under the jurisdiction or control of a State Party~~, including the no-action alternative, (we recommend this be moved before paragraph c)

f. The preparation and submission to the Authority of ~~the~~an Environmental Impact Statement to document and report the results of the ~~E~~environmental ~~I~~mpact ~~A~~assessment in accordance with Regulation 47bis, the applicable Standards and taking into account the relevant Guidelines,

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

Regarding paragraph 1, if 47bis is moved before this as was suggested by the UK in July then we believe paragraph 1 can be deleted as being duplicative. We note that 'Environmental Impact Assessment' is no longer a defined term in the Schedule. We recommend this be reinserted and that 'process' be included in the definition rather than as part of the term. For the definition of EIA we suggest that it could be pulled from the recently adopted BBNJ text or possibly from the International Association for Impact Assessments (IAIA).

- BBNJ- Environmental impact assessment" means a process to identify and evaluate the potential impacts of an activity to inform decision-making
- IAIA - "Environmental Impact Assessment" is the process of identifying, predicting, evaluating and mitigating the physicochemical, biological, socioeconomic, and other relevant effects of development proposals prior to major decisions being taken and commitments made. This includes all potential effects, both positive and negative, and encompasses natural and anthropogenic receptors.

Regarding paragraph 2, in subparagraph b we suggest amending this to 'competent independent experts' which is a term that has been used elsewhere in the regulations. To help inform the meaning of that term, and also how experts can be selected, we support a proposal that has previously been made by Jamaica for a separate new Annex pertaining to expert identification and selection.

Regarding paragraph 3(c), we note that 'Mitigate' is a defined term which covers the measures identified here, but for some reason has been deleted. We suggest it be reinserted. Alternatively, another option would be, throughout the regulations, to use the same terms as BBNJ such as 'prevent, mitigate and manage' as was suggested by Switzerland during the July 2023 meeting.

In either case, as mentioned by others we do not believe offset should be included in the definition of Mitigate or referenced in the regulations as it is here. While off-setting is often

a part of the mitigation hierarchy in other sectors, based on current scientific evidence, offsetting the impacts of environmental harm towards unique and vulnerable deep ocean ecosystems will not be possible. Additionally, ecosystems are not fungible, and the preservation of one cannot offset the destruction of another, and so we cannot see offsetting in that context ever being compatible with UNCLOS.

For paragraph 3(e), we agree with this insertion, but recommend it be moved to come before subparagraph c as the analysis of alternative activities will inform the identification of measures listed in that subparagraph. We are also not sure what the wording ‘under the jurisdiction or control of a State Party’ is doing here, and would suggest deleting that part.

For paragraph 3(f), we do not see ‘Environmental Impact Statement’ in the Schedule. We recommend reinserting the term and suggest the following language (pulled from the LTC draft EIA Standard):

“Environmental Impact Statement” is the documentation of the environmental impact assessment, which describes the predicted effects of the project on the environment (and their significance), the measures that the applicant is committed to taking to avoid, minimise and reduce them where possible, and the remaining effects that cannot be avoided.

Alternatively, and for the sake of harmonization, these Regulations could follow the BBNJ text, which refers to the EIS as an EIA report.