

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

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(s) of Delegation(s) making the proposal:**
France
- 2. Please indicate the relevant provision to which the textual proposal refers.**
Regulation 44.1 – General obligations
- 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.**

Amendments of paragraph 1 and several sub-paragraphs, as follows:

1. The Authority, Sponsoring States, the Enterprise, Contractors and the States of registry of vessels, – flag [port States] [and the States of registry of or having authority over installations, structures, ~~robots,~~ and other devices] [where they are members of the Authority] shall take necessary measures to ensure effective Protection of the Marine Environment from harmful effects which may arise ~~[directly or indirectly]~~ from Exploitation in the Area, in accordance with Regulations as well as applicable Standards and taking into consideration Guidelines referred to in Regulation 45 and the relevant Regional Environmental Management Plan and to this end shall, as applicable in their respective areas of competence:
 - (a) ~~(a)~~ Apply the precautionary approach principle and an ecosystem-based approach to ~~[the assessment management and prevention of risk of harm [in order to prevent and reduce of risk of harm] [avoidance of risk of harm]~~ [the prevention, assessment and management of risk of harm] to the Marine Environment from Exploitation in the Area;
 - (b) Apply the Best Available Techniques and Best Environmental Practices ~~[and ensure the availability of sufficient information]~~ contribute to develop and complement such techniques and practices;
- [...]
- (e) Apply the polluter pays principle ~~[approach] [having due regard to the public interest]~~;
 - ~~(e) Alt. Take into account the approach that the polluter should 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.~~

[...]

(g) Apply the Mitigation hierarchy to avoid, ~~minimize, mitigate, and should it become feasible in the future, reduce, and, if possible, offset likely significant adverse effects on the environment and, should it become feasible in the future,~~ remediate and restore the Marine Environment from harm caused by activities in the Area.}]

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

In para. 1, the wording initially proposed was unnecessarily complicated. In international waters, all ships and installations must be registered by a single State, with no need to distinguish between the competent State, the flag State, the State of registry and, a fortiori, the State exercising authority over the ship/installation. In principle, all these qualifications must correspond to one single State, the State of registry, which on the high seas is the only competent State with regard to the vessel, which is also the only flag State and the only one to exercise effective jurisdiction and control.

In sub-paragraph b), France supports the reference to the precautionary principle, and a minima, “precautionary principle or precautionary approach, as appropriate », as agreed in the BBNJ IA.

The French delegation further suggests that:

- paragraph b) be supplemented to indicate that Contractors shall contribute to improve Environmental Practices ; this proposal is in line with Regulation 3, which requires the Contractors to cooperate and collaborate to the implementation and further development of Best Environmental Practices in connection with activities in the Area ;
- paragraph g) be consistent in its first part with the Mitigation hierarchy defined in regulatory texts such as the 2014/52/EU Directive of the European Parliament on the assessment of the effects of certain public and private projects on the environment, i.e : avoidance, reduction and, if possible, offseting of likely significant adverse effects.