

**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:

United Kingdom & Canada

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

Part IV Section 2 – Environmental Impact Assessment Process & Annex IIIbis - Scoping

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.

Where the consolidated text currently contains tracked changes, these have been reverted to plain black text for ease of reading. UK text proposals are only presented in tracked changes function in Microsoft Word.

Regulation 46 – Environmental Impact Assessment Process

3. The Environmental Impact Assessment [Process] shall:

...

~~[(a)bis Be based on a Scoping Report;]~~

...

~~(g) Be conducted in accordance with the terms of reference developed during scoping in accordance with Regulation 47 bis ter;~~

...

4. The Environmental Impact Assessment [process] must follow certain procedural steps and entail the following elements:

~~(a) A stage for scoping Stage and Scoping Rreport in accordance with Regulation 47 bis to identify and risk assess the anticipated activities and potential impacts associated with the proposed Exploitation which are relevant to the Environmental Impact Assessment;~~

Regulation 47 – Environmental Impact Assessment

1. The applicant or Contractor shall, in accordance with the Standards, and taking into consideration ~~account the~~ Guidelines, undertake an impact assessment, [as described in Regulation 46 (4),] based on the ~~[T~~erms of ~~[R~~eference ~~[agreed]~~ in the Scoping ~~R~~report, ~~[to describe the impacts on the marine environment and Underwater Cultural~~

~~Heritage and to predict the nature and extent of the Environmental Effects of the mining operation, including residual impacts, on the marine environment and Underwater Cultural Heritage, also considering cumulative impacts, including existing and foreseen mining operations, other activities and natural phenomena.]~~

This includes assessing:

Regulation 47bis – Scoping Report

1. [An] applicant or Contractor, shall undertake scoping and prepare and submit to the Secretary-General a Scoping Report in accordance with this Regulation, Annex IIIbis ~~[the applicable Standard and taking into consideration Guidelines].~~

2. An applicant or Contractor, shall ~~undertake the~~ Environmental Impact Assessment scoping ~~[process]~~ to identify and prioritize ~~the main activities and~~ potential impacts of the activities associated with the proposed Exploitation ~~activities~~, in order to focus the Environmental Impact Assessment and Environmental Impact Statement on the key environmental issues.

3. In undertaking the Environmental Impact Assessment scoping ~~process~~, the applicant or Contractor, shall:

...

(f) identify terms of reference for the Environmental Impact Assessment

(g) prepare a report on the outcomes of scoping described above including the terms of reference ('Scoping Report').

6. The Commission shall consider a Scoping Report submitted in accordance with this Regulation, and taking into account the consultation submission received under Regulation 93 bis (8), the applicant or Contractor's written response prepared under Regulation 93 bis (9), any additional information provided by the Secretary-General, and in accordance with [the applicable] Standards and taking into consideration Guidelines. Based on this review, the Commission shall either approve a Scoping Report, disapprove it or make recommendations to the applicant or Contractor under paragraph 7, regarding the proposed scope of the Environmental Impact Assessment, accompanied by a detailed rationale [for such recommendations].

7. The Commission may recommend:

(a) That the applicant rRevise the preliminary Environmental Risk Assessment, terms of reference or other aspects of the Scoping Report ~~based on different methodology or inputs;~~

~~(b) Amend the proposed terms of reference for the Environmental Impact Assessment;~~

~~(c) Revise a Scoping Report~~ and submit the report for further consideration; or

~~(d) Further c~~Consultation under Regulation 93 bis on any revised Scoping Report, particularly if the recommendations are likely to lead to a Material Change in the Scoping Report.

8. The applicant or Contractor ~~shall,~~ must obtain the Commission's approval of the Scoping Report under paragraph 6 before proceeding with the next steps of the Environmental Impact Assessment ~~[pursuant to Regulation 47]:~~

~~(a) Take full account of the Commission's recommendations under this Regulation [for any recommendations or scoping reports concluded prior to the adoption of these Regulations and in accordance with an Exploration contract];~~

~~[(b) Submit a revised scoping report, including any amended terms of reference];~~

and

~~(c) Agree the final contents of the proposed terms of reference in the Scoping Report with the Commission.~~

Annex IIIbis – Scoping Report

~~(pnbis) An explanation for how the activities and studies planned for the Environmental Impact Assessment will be sufficient to determine likely environmental impacts, and sufficient to propose mMitigation and management strategies and monitoring methodology; and,~~

~~(o) A draft tTerms of rReference for the Environmental Impact Assessment, which identifies the activities and studies planned for the [subsequent impact assessment stage of the] Environmental Impact Assessment, and any additional baseline data that will be required;~~

~~(p) An explanation for how the activities and studies planned for the Environmental Impact Assessment will be sufficient to determine likely environmental impacts, and to propose Mitigation and management strategies and monitoring methodology; and,~~

(q) A note describing and explaining any divergence from [relevant applicable Standards or [ISA] Guidelines [of the Authority].

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

General rationale for this proposal:

This proposal aims to make clear that scoping includes:

- 1) development of Scoping Report which includes ToRs proposed for undertaking the EIA by the applicant,
- 2) the process of reviewing the Scoping report and proposed ToRs between applicant and LTC,
- 3) Production of the final Scoping Report and ToRs once approved by LTC.

The submission of a Scoping Report by the applicant to the Authority (LTC) must include, as the final product in the Scoping Report, the terms of reference (ToRs) that the applicant proposes for undertaking the Environmental Impact Assessment. The applicant undertakes ‘scoping’ to inform the development of the Scoping Report and the ToRs within. The Scoping Report and the proposed ToRs within must be approved by the LTC, taking into consideration comments from Stakeholder consultation conducted when Scoping Report and ToRs proposed within is submitted, before they become the ‘agreed’ final Scoping Report with ToRs for undertaking the EIA. Therefore, the final approved Scoping Report and the ToRs within shall be developed based on the results of the scoping as a whole.

We consider further detail on developing and presenting the ToRs submitted in the Scoping Report needs to be added to the Standards and Guidelines for conducting Environmental Impact Assessments and preparing Environmental Impact Statements, as ToRs are not currently covered in these Standards and Guidelines.

Finally, we note that all references to ‘Scoping Report’ should be capitalised in these regulations and be a defined term in the Schedule like other Environmental Plans.

Specific drafting rationale:

46 (3) (abis & g): Regulation 47 bis is about the “EIA Process” as a whole. The EIA Process includes scoping through to final approval of the EIS by the Authority. The EIA “Process” cannot be based on the Scoping Report or scoping, as scoping is part of the EIA Process.

We agree that the EIA itself shall be based on scoping and the ToRs agreed within. However, we suggest deleting (abis) and (g) because they are duplicative, as (4) (a) already covers this requirement.

46 (4) (a): We have deleted some of this text because it would be duplicative - what scoping is, is covered by regulation 47 bis.

47 (1): The word 'agreed' is not required here. Regulation 47bis clearly details that the Scoping Report and ToRs within have to be approved by the LTC and agreed between the LTC and applicant before applicant can move on to undertake EIA.

47bis: renamed regulation to 'scoping' as the regulation covers all of scoping, leading up to and including the preparation, submission and approval of a Scoping Report.

47bis (1): text added to make clear that the Scoping Report shall be developed in accordance with Annex IIIbis 'Scoping Report', similar to drafting for introductory paragraphs for other Plans submitted.

47bis (7) (a): added 'preliminary' because regulation 47bis prescribes that the scoping needs to undertake a 'preliminary' Environmental Risk Assessment. The full ERA is not required until later in the EIA Process (after scoping). We have proposed merging paragraphs (a-c) to streamline and for clarity.

47bis 8: we have proposed streamlining deletions and drafting to make the link between paragraphs 6 (Commissions ability to make recommendations) and 7 (what such recommendations may be) clear.

Annex IIIbis – we have proposed moving paragraph (p) above paragraph (o) because you first need to provide an explanation for how the activities and studies planned for the Environmental Impact Assessment will be sufficient, and then move on to providing the ToRs for undertaking the EIA. The ToRs (paragraph o) will be the outcome of all the paragraphs preceding in Annex IIIbis. We consider that 'activities and studies' is a high-level umbrella term to use in this Annex to describe everything that needs to be detailed in the ToRs to undertake an EIA as per paragraph (o). We have therefore proposed removing the end of paragraph (o) as 'additional baseline studies' fits under 'activities and studies' to be included in the ToRs for undertaking an EIA. As highlighted in the general rationale above, additional detail needs to be added to the Standards and Guidelines (in particular those for EIA and EIS) regarding the content of ToRs in the Scoping Report.

General drafting note: we do not consider there is a need to use the terms 'draft' or 'proposed' next to 'terms of reference' in these regulations as we believe this is implicit and it would not be consistent with the approach taken elsewhere in these regulations. All Plans (including Environmental Plans e.g. EIS) at the point they are submitted to the Authority for approval are 'draft' or 'proposed' documents – they are not 'final' until they are approved by the Authority in the processes stipulated in these regulations. These other plans do not stipulate in these regulations that they are 'draft' or 'proposed', but rather rely on the fact this is implicit by the approval processes set out in these regulations. We consider it is the same for scoping – there are clear provisions, in particular 47bis (6) & (8) that state the Scoping Report (including ToRs within) must be approved by LTC, and this must be done before an Environmental Impact Assessment can be undertaken.