

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 31TH 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.

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

Germany

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

Schedule

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.

“Best Available ~~Science and~~ Scientific Information<del> Knowledge</del>”	means the scientific information and data accessible and attainable that, in the particular circumstances, is <u>accurate, reliable, and relevant</u> of good quality and is objective, within reasonable technical and economic constraints, and is based on internationally recognized scientific practices, standards, technologies and methodologies, including peer review.
“Best Available Techniques”	~~{~~means the latest stage of development, and state-of-the-art processes, facilities or methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the Protection of the Marine Environment from the harmful effects of activities in the Area, taking into account the guidance set out in the applicable Standards and Guidelines.~~}~~ ~~{~~Alt. “Best Available Techniques”<del> means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:</del> ~~(a) ‘techniques’ includes both the technology used and the way in which the Installation is designed, built, maintained, operated and Decommissioned;~~ ~~(b) ‘available techniques’ means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator.~~ ~~(c) ‘best’ means most effective in achieving a high general level of protection of the environment as a whole;}~~

“Best Environmental Practices”	means the application of the most appropriate combination of environmental control measures and strategies, for purposes of ensuring the effective ~~p~~Protection of the Marine Environment, and based on the Best Available Scientific Information and Best Available ~~Technology Techniques~~ that will change with time in the light of improved knowledge, understanding or technology, as well as the incorporation of the relevant traditional knowledge of Indigenous Peoples and local communities and in accordance with applicable Standards taking into account the relevant Guidelines-.
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“Change of Control”	~~means where there is a change resulting in ownership of 50 percent or more of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, or a change resulting in ownership of 50 percent or more of the entity providing an Environmental Performance Guarantee~~ <u>Alt.1 means the occurrence of any of the following events: (a) a transaction by which any person or group obtains beneficial ownership of more than 50% of the outstanding voting stock of the Company or newly represents more than 50% of the combined voting power with respect to the election of directors; (b) a merger or consolidation of the Company with any other entity where the resulting entity is not controlled by the Company's preexisting shareholders; (c) the sale or transfer of substantially all of the Company's assets; (d) a change in the majority of the Company's Board of Directors as the result of a transaction</u> ~~Alt.2 means a Change of Control of an applicant, a Change of Control of a Contractor, or a Change of Control of an entity providing an Environmental Performance Guarantee on behalf of a Contractor, as applicable.~~
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“Contamination”	~~means the presence of an impurity where a pure or contaminant free medium would be expected; the contaminant can be the result of human activity or naturally occurring.~~
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“Cumulative Environmental Effect^s”	means any ~~[material]~~ consequences in the Marine Environment arising over time from the conduct of Exploitation activities or in combination with other stressors and activities in the same area, including those not regulated by the Authority. In case of cumulative effects, the combination of all effects in the
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	same area may be more severe than the sum of its parts.
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<u>“Ecosystem Approach”</u>	<u>means a comprehensive, integrated and interdisciplinary approach to the management of human activities based on the [Best Available Scientific Knowledge][Best Available Science and Scientific Information] —to balance ecological, social and governance principles at appropriate temporal and spatial scales in a distinct geographical area to achieve ecosystem conservation and sustainable resource use. Scientific knowledge and effective monitoring are used to acknowledge connections, integrity and biodiversity within an ecosystem along with its dynamic nature and associated uncertainties. The ecosystem ~~base~~-approach recognizes coupled socio-ecological systems, with Stakeholders involved in an integrated and adaptive management process where decisions reflect societal choice.</u>
<u>“Ecosystem Integrity”</u>	<u>means the ability of an ecosystem to support and maintain ecological processes and a diverse community of organisms. It is measured as the degree to which a diverse community of native organisms is maintained, and is used as a proxy for ecological resilience, intended as the capacity of an ecosystem to adapt in the face of stressors, while maintaining the functions of interest.</u>
<u>“Effective Control”</u>	<u>Alt.2 of an applicant or Contractor by:</u> <u>(a) A State which is not the State of nationality of the applicant or Contractor (the Controlling State); or</u> <u>(b) A national of a State which is not the State of nationality of the applicant or Contractor (the Controlling National), means that the Controlling State or Controlling National has the power to secure that the affairs of the applicant or Contractor are conducted in accordance with the instructions or directions of the Controlling State or Controlling National, applying the relevant Standard.</u> <u>Alt.3 of an applicant or Contractor means:</u> <u>(a) with respect to a State which is the State of Nationality of the applicant or Contractor, “Effective Control” means the existence of regulatory control and meaningful economic ties between the applicant or Contractor and that State; or</u> <u>(b) with respect to another State that is not referred to in (a) above, or to a national of that State, “Effective Control” means the exercise of influence resulting in de facto control of the applicant or Contractor by that State.</u>
<u>“Effective Protection”</u>	<u>means achieving the Authority’s Strategic Environmental Goal and Objectives pursuant to regulation 44ter, the regional environmental objectives,</u>

	environmental thresholds and the requirements of regulation 13, paragraph 9, and consistent with article 145 of the Convention.
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“Environmental Effect”	~~means any [material] consequences in the Marine Environment, arising from [Environmental Impacts caused by] the conduct of activities under an Exploitation Contract activities, being positive, negative, direct, indirect, temporary or permanent, or including Cumulative Environmental Effects.~~ ~~[Alt. means any material consequence or outcome of an Environmental Impacts in the Marine Environment arising from action or the conduct of Exploitation activity to the environment i.e. whether positive, negative, direct, indirect, cumulative, temporary or permanent]~~ <i>means any consequences in the Marine Environment, arising from the conduct of activities under an Exploitation Contract, being positive, negative, direct, indirect, temporary or permanent, or including Cumulative Environmental Effect.</i>
“Environmental Impact”	~~means changes, biological, physical and or chemical, to the environment, resulting from Exploitation activities.~~ <u>[Alt. means the influence of an action or activity on the environment.]</u>

<u>“Impact”</u>	<u>is the influence of an action or activity on inter alia the biological, chemical, or physical environment, or sociocultural or economic values.</u>
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<u>“Managing Company”</u>	<u>means the ability to exercise voting power over the Contractor, the authority to appoint or dismiss members of the Contractor’s board, the capacity to direct or influence major operational decisions of the Contractor, or any other circumstances in which a company exerts or is capable to exert a dominant degree of influence over the Contractor.</u>
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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:
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	(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 ~~p~~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; ~~[(e) Offsetting, only as a last resort and if it becomes technically and scientifically feasible in the future.]~~
["Monopolize"]	[means the ability to control over 75 per cent of the estimated annual volume of similar Mineral-bearing ore exploited, produced or removed from the Area after Commercial Production has occurred in respect of at least 2 Exploitation Contracts.]

†“Pilot Mining”†	[means an <i>in situ</i> operating of the integrated system of all equipment and all related process steps, including collector, raiser and release techniques, for exploitation activities in a Contract Area under appropriate technical, spatial and temporal conditions which provides evidence concerning, inter alia, environmental impact, commercial capacity, duration of operations to validate feasibility of future Commercial Production.†]
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“Rehabilitation”	means an occurrence of when an ecosystem recovers ~~certain~~ characteristics of its natural state, such as the presence of <u>its original</u> ~~certain~~ species, functions or services.
“Regional Environmental Management Plan”	means a proactive spatial management strategy that anticipates exploitation and that includes the designation of ~~a~~ Areas of Particular Environmental Interest. <u>Where the Regulations refer to the “applicable Regional Environmental Management Plan”, this shall be understood to mean the Regional Environmental Management Plan adopted by the Council for the particular area and type of resource concerned.</u>

“Rules of the Authority”	means ~~– [the Convention, the Agreement,] – these Regulations and other rules, regulations and procedures of the Authority, including Standards and Guidelines as may be adopted from time to time.~~ <i>means all binding instruments adopted or applied by the Authority that govern activities in the Area and are applicable to Contractors, including Regulations, the Exploitation Contract, Standards adopted by the Council, and any relevant rules, procedures, decisions or directives of the Assembly or the Council adopted within their respective competences under the Convention and the Agreement</i>
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“Serious Harm to the Marine Environment-~~ALT~~”	means an Environmental Effect that, individually in combination or cumulatively meets any of the following criteria: (a) it is not likely to be redressed through natural recovery within a reasonable period; (b) it impairs the ability of affected populations to replace themselves; (c) it degrades the long-term natural productivity of habitats or ecosystems; (d) causes, on a more than temporary basis, a loss of species richness or biological diversity, including community structure, genetic connectivity among populations, ecosystem functioning and ecosystem services on the seabed, at the sea surface, and in midwater and in the benthic boundary layer, or habitat; or (e) any other criteria contained in the relevant Regional Environmental Management Plan, or Standards.]
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<u>“Strategic Environmental Goal”</u>	<u>means the goal pursuant to regulation 44ter, paragraph 3.</u>
<u>“Strategic Environmental Objectives”</u>	<u>means the objectives pursuant to regulation 44ter, paragraph 4.</u>

<u>“Test Mining”</u>	~~means an <i>in situ</i> testing that do not have harmful effects on the marine environment of the integrated system of all equipment and all related process steps (e.g. including collector, raiser and release techniques) for Exploitation activities in a Contract Area under appropriate technical, spatial and temporal conditions which allows the Test~~
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	~~Mining for the provision of evidence to support the information provided by an applicant in its application for a Plan of Work for Exploitation, and to assist the Commission and the Council in its evaluation of the application against the criteria contained in Regulation 13 and 15.~~
“Test Mining-ALT”	means the <i>in situ</i> use and testing of a fully integrated and functional mining system, including collection systems and water discharge systems.

<u>“Underwater Cultural Heritage”</u>	~~refers, for purposes of these Regulations, to all traces of human existence found in the Area which have been underwater for at least 100 years, having a cultural, historical or archaeological character, such as objects of prehistoric character, sites, structures, buildings, artifacts, vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context.~~ <u>Alt. refers to all traces of human existence found in the Area which have been underwater for at least 100 years, having a cultural, historical or archaeological character, or are associated with intangible underwater cultural heritage, such as objects of prehistoric character, sites, structures, buildings, artifacts, vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context. It also refers to objects or sites which are the subject of intangible underwater cultural heritage.</u> <u>For this purpose, “intangible underwater cultural heritage” refers to practices, representations, expressions, knowledge, skills, and traditions that are transmitted from generation to generation – as expressed in the instruments, objects, artefacts, flora, fauna and cultural spaces associated therewith – that communities, groups, or, in some cases, individuals recognize as part of their cultural heritage; and relate to the underwater environment and its interaction with human cultures. This may include, but is not limited to, traditional navigation knowledge, oral histories associated with maritime landscapes, spiritual and ritual practices linked to water bodies, and artisanal fishing techniques.</u>
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4. Please indicate the rationale for the proposal. [150-word limit]

At the outset, Germany would like to make a procedural point. We note that in previous iterations of the draft regulations, some definitions of terms had been deleted despite the terms still appearing in the draft regulations. Some of those definitions have now been reinstated. To improve efficiency, we suggest keeping all relevant terms in the draft Schedule and once we have an advanced draft of the

Regulations, we can delete those terms from the Schedule which no longer appear in the Regulations.

For the definition of **Best Available Scientific Information**, we support the proposed changes, which are in line with the BBNJ Agreement. We suggest that the term itself could also be aligned with the BBNJ Agreement by referring to *Best Available Science and Scientific Information*.

On the definition of **Best Available Techniques**, we support the suggested definition and support deleting the alternatives.

We support the proposed definition of **Best Environmental Practices** as currently drafted. If our proposal to refer to "*Best Available Science and Scientific Information*" is agreeable, then these terms should also be used here and consistently throughout the regulations including here.

With respect to the definition of **Change of Control**, we support the ALT.1 version.

We wonder why the definition for **Contamination** is suggested to be deleted, when the term appears in the draft regulations. We kindly ask to keep it in the Schedule.

We support the current draft definition of **Cumulative Environmental Effect**, but wish to remove the word "*material*", which is currently crossed out. Cumulative effects are simply the consequence of the combined impact of past, present and future human activities and natural processes, regardless of whether these are "*material*" or "*minor*" or anything else. Furthermore, we suggest referring to "*effects*" in the plural, rather than the singular form. This is because we usually find more than one effect on the marine environment as a result of cumulative impacts.

We support the definition for **Ecosystem Approach** but note a small drafting suggestion: In the last sentence, the definition should refer to "*ecosystem approach*", rather than "*ecosystem-based approach*".

We reserve our position on the definition of **Ecosystem Integrity**, as this is being discussed within the Friends of the President Group for DR44ter.

On the definition of **Effective Control**, Germany prefers the Alt 2 definition, as was proposed by the small working group to the Council session last year. In our view, this proposal aligns with UNCLOS, and captures well that the focus should be on who actually directs the company. We believe the incorporation of the concept of 'Controlling National' allows for the ISA also to look up the corporate chain. This is necessary in our view, as the entity that truly directs a contractor's operational decisions may often be a parent company or ultimate beneficial owner, not the name on the ISA contract.

We welcome the definition of **Effective Protection**, and suggest adding a reference to Article 145 of the Convention.

Regarding the term **Environmental Effect**, Germany prefers the original definition over the Alternative but believe some changes are necessary so the definition would read: "*Environmental Effect*" means any consequences in the Marine Environment, arising from the conduct of activities under an Exploitation Contract, being positive, negative, direct, indirect, temporary or permanent, or including Cumulative Environmental Effect." In any event, we do not support including the word "*material*" before the word "*consequences*".

As for the definition of **Environmental Impact**, we still have a preference for the original wording rather than the alternative version. In the original version, we would suggest adding the word “biological” before the words “physical and or chemical”. However, we understand that discussions on this definition, as well as other related definitions, are being facilitated by the UK with support from an informal group working on the “mitigation hierarchy”. We therefore do not want to interfere with these discussions and reserve our position for the time being.

We support the definition of the term **Impact** as currently included in the Schedule. has been deleted.

We support the inclusion of a new defined term of **Managing Company**. In our view, such definitions should be grounded in objective indicators of control, such as the ability to exercise voting power over the Contractor, authority to appoint or dismiss members of its board, the capacity to direct or influence major operational decisions, or any other means through which a company exerts a dominant degree of influence over the Contractor.

We welcome the definition for the terms **Mitigate** and **Mitigation** but we propose deleting the last sub-point (e) on offsetting. The informal discussions on the Mitigation Hierarchy have demonstrated that offsetting is not possible for seabed mining in the Area, as the ISA lacks jurisdiction over activities other than mineral-resource related activities. We also note that out-of-kind offsetting is inappropriate from a scientific perspective.

We reserve our position on the definition of the term **Monopolize**. As noted during the Council Session in March, we will need detailed discussions on this definition. For now, we only wish to note that the current definition mentions “similar Mineral-bearing ore” without specifying what is meant by that. The definition also mentions that production must have occurred “in respect of at least 2 Exploitation Contracts”, though it is unclear if the 2 contracts must be held by the contractor at risk of monopolisation.

We support inclusion of the definition of **Pilot Mining** which aligns with the outcome of the intersessional work on this topic. For the same reason, we also support the suggested changes to the definition of **Test Mining** and **Test Mining ALT**. This is subject to further deliberations within the IWG on test and Pilot Mining.

Concerning the definition for **Rehabilitation**, we support all suggested changes.

We support the definition for **Regional Environmental Management Plan**, including the red text in brackets, which aligns with the proposal by the intersessional WG on REMPs.

We support including a definition of **Rules of the Authority**, but we believe the definition should read:

“Rules of the Authority” means all binding instruments adopted or applied by the Authority that govern activities in the Area and are applicable to Contractors, including Regulations, the Exploitation Contract, Standards adopted by the Council, and any relevant rules, procedures, decisions or directives of the Assembly or the Council adopted within their respective competences under the Convention and the Agreement.”

This has three purposes: (1) it gives the Regulations a shorthand that can be used consistently throughout the Regulations every time we want to refer specifically to all instruments that bind Contractors, (2) by giving a detailed definition, there can be no ambiguity about which instruments are included - which is not the case if we use the term ‘rules, regulations and procedures of the

Authority', (3) the RRP's of the Authority are a term used by UNCLOS with some specific procedural elements, as well as specific repercussions for breach, also they require Assembly approval. So introducing this separate term and category of instruments, allows some flexibility. If the term is retained, then the Regulations need to be reviewed to ensure the correct term - either "Rules of the Authority", or "rules, regulations and procedures of the Authority" - is used consistently and in the right place, each time such a term is used, throughout the regulations.

We support the proposed changes to the definition of **Serious Harm to the Marine Environment**, which sees the Alternative version being retained in the Schedule.

We also support the suggested separate definitions for the terms **Strategic Environmental Goal** and **Strategic Environmental Objectives**, which reflects discussions in the Friends of the President Group on DR 44ter.

With respect to the definition of **Underwater Cultural Heritage** and related definitions, we support the ALT version, including the definition of intangible cultural heritage.