

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL - PART II**

Informal Working Group - Environment

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@isa.org.jm.

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

The Pew Charitable Trusts

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

DR 46bis

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.

- The facilitator’s proposed amendments are reflected in **red**.
- Our proposed amendments are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

1ter. The purpose of an environmental impact assessment under these regulations shall be to predict environmental impacts anticipated from the proposed activities, to enable the Authority to assess the potential adverse Environmental Effects, with the aim to:

- (a) ensure effective protection for the marine environment from harmful effects which may arise from such proposed activities,
- (b) ensure that activities in the Area are carried out with reasonable regard for other activities in the Marine Environment, and
- (c) prevent Serious Harm to the Marine Environment arising out of the proposed activities.

2. The environmental impact assessment process shall include the following steps:

- a) A Scoping process in accordance with Regulation 46[ter] to identify and prioritize the main activities and potential impacts associated with the proposed mining operation, as well as to identify and engage with Stakeholders, in order to focus the Environmental Impact Statement on the key environmental issues.
- b) An Environmental Impact assessment and evaluation process to describe and predict the nature and extent of the Environmental Effects of the mining operation, comparative to alternatives considered including cumulative and synergistic impacts and residual effects using Best Available Scientific Evidence, Best Environmental Practices, Best Available Techniques, and Good Industry Practice and taking into account, where applicable:
 - i. The intensity or severity of the impact at the specific site being affected;
 - ii. The spatial extent of the impact relative to the availability of the habitat type affected;
 - iii. The sensitivity/vulnerability of the ecosystem to the impact;
 - iv. The ability of an ecosystem to recover from harm, and the rate of such recovery.
 - v. The extent to which ecosystem functions may be altered by the impact; and

- vi. The timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life-history stages.]
- c) The Identification of measures envisaged to prevent, Mitigate ~~or if possible, offset~~, and manage harmful Environmental Effects and risks to as low as practicable, and within acceptable levels in accordance with environmental quality objectives Standards including through the development and preparation of an Environmental Management and Monitoring Plan;

[(c)bis An analysis of reasonable alternatives to the planned activity under the jurisdiction or control of a State Party, including the no-action alternative;]

- d) The preparation and submission to the Authority of the Environmental Impact Statement to document and report the results of the environmental impact assessment in accordance with Regulation 47 and the applicable Standards and taking into account the relevant Guidelines
- e) Publication and review by the Commission of the Environmental Impact Statement, and publication of the report and recommendation by the Commission to the Council pursuant to Regulations 11 to 15;
- f) A decision by the Council to approve, or not approve, the proposed activities or proposed modification to the Plan of Work that was the subject of the environmental impact assessment, including any conditions imposed upon an approval, which decision shall be recorded and published in accordance with Regulation 16.

~~3. When, following the approval of a Plan of Work, the Contractor modifies the Plan of Work in such a way that the proposed modification constitutes a Material Change in the Environmental Management and Monitoring Plan or Closure Plan as determined under these Regulations, S~~screening shall also be part of an the environmental impact assessment process. when, following the approval of a Plan of Work, the Contractor modifies the Plan of Work in such a way that the proposed modification constitutes a Material Change in the Environmental Management and Monitoring Plan or Closure Plan in order to determine whether a revised Environmental Impact Statement is required

3alt. In addition to the Environmental Impact Statement required for an application for a plan of work pursuant to Regulation 7(3)(d), a Contractor must conduct a new Environmental Impact Assessment and submit a new or revised Environmental Impact Statement when:

- (a) A Material Change to an existing Plan of Work is proposed which is likely to increase the adverse Environmental Effects caused by the activities;
- (b) An activity described in the Plan of Work is predicted to exceed the impact thresholds set out in the [Commission's Recommendations for the Guidance of Contractors ISBA/25/LTC/6/Rev.1 or a Standard that sets screening thresholds for environmental impact assessment], and this activity and predicted impact has not already been addressed by an Environmental Impact Statement; or,
- (c) otherwise determined necessary by the Commission, in accordance with applicable Standards and taking into account Guidelines.

- 4. The environmental impact assessment process shall:
 - a) Be based on relevant baseline data that captures temporal, ~~and~~ seasonal and spatial variation, in accordance with Standards and the relevant Regional Environmental Management Plan;
 - b) Include an environmental risk assessment that takes into consideration the region as a whole, in accordance with the objectives and measures of the relevant Regional Environmental Management Plan, ~~if any~~;
 - c) Provide for sStakeholder consultation in accordance with relevant Standards and Guidelines at the scoping stage and before the Environmental Impact Statement is finalized; and

- d) Be subject to an independent scientific assessment prior to the submission of the proposed Environmental Impact Statement to the Authority.

(e) Take into account the results from test mining, in accordance with Regulation 48bis]

(f) Be conducted in accordance with the terms of reference developed during the scoping process.

(g) Be carried out by a suitable combination of qualified, independent and competent environmental impact assessment practitioners and scientific experts experienced in the relevant issues for the particular project and its location; and

(h) Identify scientific knowledge gaps or data uncertainties, and the degree to which these influence the assessment

(5) A Contractor shall review periodically, as indicated in the Environmental Management and Monitoring Plan, the impact assessments previously performed, including for cumulative impacts of activities ~~covered by the assessment, periodically as indicated in the monitoring plan and revise them thereafter~~ whenever a change in the mining operation has occurred or there is relevant new information.

7bis. In conducting an environmental impact assessment for the purposes of these regulations, an applicant or Contractor shall proactively consult with Stakeholders at all stages, in accordance with relevant Standards and taking account of Guidelines; and in the course of such consultations, the applicant or Contractor shall:

- (a) Provide Stakeholders with access to up-to-date and comprehensive information about the proposed activities and environmental data and impacts;
- (b) Use best efforts to obtain Stakeholder comments on the draft scoping report and draft environmental impact statement for a reasonable period.
- (c) Provide a reasonable opportunity for Stakeholders to raise enquiries and to make known their views;
- (d) Make publicly available Stakeholder comments received during the consultation process, including on the applicant or Contractor's own website;
- (e) Record and address, in the scoping report and Environmental Impact Statement respectively, any Stakeholder comments received.

46[ter] Environmental Impact Assessment Scoping

1. An application or Contractor shall use environmental impact assessment scoping to identify and prioritize the main activities and potential impacts associated with the proposed mining operation, in order to focus the Environmental Impact Statement on the key environmental issues.
2. In undertaking the environmental impact assessment scoping process, the applicant or Contractor shall:
 - a. Review available data and knowledge, and propose additional data to be collected and studies needed to complete an Environmental Impact Statement in accordance with these regulations;
 - b. Undertake a preliminary impact analysis and environmental risk assessment which will be updated as the environmental impact assessment proceeds;
 - c. Proactively identify Stakeholders in accordance with relevant Standards and taking into account any Guidelines; and
 - d. Identify and evaluate feasible alternative means of carrying out the project that will be examined in detail in the environmental impact assessment.
3. The applicant or Contractor shall prepare and submit to the Secretary-General a scoping report in accordance with this regulation [and in the format prescribed in Annex III bis].
4. Upon receipt of a scoping report from an applicant or Contractor, the Secretary-General shall:

- a. Make the report available on the Authority's website for a period of at least 60 days, with an invitation for members of the Authority and Stakeholders to submit comments in writing;
 - b. Following the close of the comment period under paragraph (1)(a), provide any comments received to the applicant or Contractor with a specified timeframe for response;
 - c. Following the close of the comment period under paragraph (1)(a), provide any comments received to the applicant or Contractor with a specified timeframe for response;
 - d. At the expiry of the timeframe specified in paragraph (1) (b), provide the Commission with the scoping report, any stakeholder comments received, and any responses to those comments from the applicant or Contractor.
5. The Commission shall consider a scoping report submitted in accordance with this regulation, and any comments and responses received, in accordance with any relevant Standards and taking into account Guidelines. Based on this review, the Commission shall make recommendations to the applicant or Contractor regarding the proposed environmental impact assessment, accompanied by a detailed rationale.
 6. The Commission's recommendations under paragraph (2) may include recommendation:
 - a. to revise the environmental risk assessment or other aspects of the scoping report based on different methodology or inputs;
 - b. to amend the proposed terms of reference for the environmental impact assessment; or
 - c. to re-submit a revised scoping report for further Stakeholder consultation and Commission review, in the case where uptake of any of the Commission's recommendations are likely to lead to a Material Change in the Scoping Report.
 7. The applicant or Contractor shall take into account the Commission's recommendations under this regulation, before proceeding with an environmental impact assessment process.

4. Please indicate the rationale for the proposal. [150 word limit] - We have tried to keep this short, but there remains quite a few issues with this regulation and so we wanted to provide sufficient rational to justify the proposals above.

*We welcome the improvements to this regulation but believe this regulation and draft regulation 47 could benefit from some reorganization. For example, Regulation 46bis combines both the EIA process and content making it confusing to follow. [Please see our previous textual submission for an example of what a reorganization could look like.](#) We have provided some textual submissions above to improve the current drafting and provided the accompanying rationale below.

Regarding proposed paragraph 1ter, as noted by Brazil in their July intervention 'Environmental impact assessment' is not a defined term in the Regulations and may be a term that is used to mean slightly different things in different jurisdictions. It therefore seems prudent to ensure all parties have the same understanding of its objectives in this context via an upfront statement of its purpose in relation to activities in the Area, in the opening paragraphs of this regulation 46(bis).

Regarding paragraph 2(a), scoping is an essential stage of an EIA process in which the adequacy of a planned EIA and baseline datasets can be assessed before the EIA is undertaken. For the "scoping process" to be meaningful, more detail should be added to the Regulations to ensure scoping is properly managed and assessed. We do note and support the inclusion of an additional annex IIIbis to the Regulations proposed in the Facilitator's Text, which we believe clarifies the content of the scoping report. However, it remains unclear in these regulations or in the draft Standard and Guidelines what the scoping process entails, including what happens to the Scoping

Report. As such, we recommend the insertion of a new draft Regulation (46[ter]), which provides details on the process and requirements of scoping and references the new Annex IIIbis.

Regarding paragraph 2(c), we recommend after “as low as practicable” to insert “and within acceptable levels in accordance with environmental quality objectives, indicators and thresholds”. This proposed edit will highlight the specific relevance here of environmental threshold Standards as proposed under DR 45, and cross referenced in DR 48 (EMMPs) – We also recommend deleting “of if possible, offset” as off-setting of impacts of environmental harm in unique and vulnerable deep ocean ecosystems will not be possible. Ecosystems are not fungible, and the preservation of one cannot offset the destruction of another.

Regarding paragraph 2(c)bis - we support the inclusion of this provision as it is standard practice for EIA to consider no-action alternative

It seems that this paragraph is missing a few final steps in the EIA process. We propose that two additional subparagraphs (2e and 2f) be added that specify that the EIS must be published and reviewed by Stakeholders and the Commission pursuant to Regs 11 to 15 and that a decision must then be made by the Council to approve or not approve the proposed activities or proposed modification to Plan of Work, which will be recorded and published in accordance to Regulation 16. In our view, omitting these two steps in the process would entirely undermine the integrity and purpose of the ISA’s EIA regime.

Regarding paragraph 3, we would agree with the sentiment expressed by these proposed edits, but like Singapore mentioned in their intervention, suggest that amended wording might indicate their intent more clearly. Rather than call for “screening” without defining that term, it might be more useful to explain what “screening” would entail, namely: a determination by the contractor, and reviewable by the Authority, that a new EIA is required.

Regarding paragraph 4, we recommend three new sub-paragraphs:

- subparagraph (f) requires the EIA to be conducted in accordance with the terms of reference developed during the scoping process. The scoping process is where the Contractor proposes what it will cover in the EIA, and the ISA checks and agrees to this scope, before the EIA commences. It therefore makes sense here to refer back to that scoping phase, to ensure the EIA does follow what was previously agreed with the ISA
- subparagraph (g) to specify that the EIA must be carried out by a suitable combination of qualified, independent and competent environmental impact assessment practitioners. Without the clarification in para (g) the Regulations do not contain any other stipulation about who carries out the EIA.
- new sub-paragraph (h) to stipulate that the EIA should identify scientific knowledge gaps, or data uncertainties, and describe the degree to which these influence the assessment. This is critical as we know we will have gaps in understanding at the point of time when the EIS is submitted, this cannot be avoided, especially with the current state of scientific knowledge. But what the ISA needs to consider is: how those gaps affect the predictions in the EIA, and will it be possible to manage and reduce those gaps enough for the ISA to confidently allow the activity to proceed. These factors may be hard for the ISA to discern, unless the applicant is expressly asked to include this element in the EIA.

Lastly, we would like to propose a **new paragraph 7bis**. focused on stakeholder consultation requirements during an EIA. We make this proposal because, although stakeholder consultation during the EIA is mentioned (for example, in 2(a) and proposed 8bis of this regulation - which we welcome), the draft Regulations lack clear requirements about what type of consultation is required from the applicant in the EIA process, and when it is required. In addition, we recall that the LTC did noted in ISBA/27/C/2 that “a requirement for stakeholder consultation in the preparation (emphasis added) of Environmental Plans would be preferable... [and] the Council may wish to consider amending the Draft Regulations to include stakeholder consultation as a requirement in the preparation of an applicant’s Environmental Plans.” We agree with this assessment as it does not make sense to comment on both the EIS and the EMMP (elements of the Environmental Plan) together as the EIS and comments received should inform the development of the EMMP. Therefore, this proposed paragraph includes consultation requirements both on the scoping report and draft environmental impact statement before it is submitted as part of application for a Plan of Work.