

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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 of Working Group:

Informal Working Group on Institutional Matters

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 15

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 15

Commission’s recommendation for the approval or disapproval of a Plan of Work

1. [Taking into account regulations 12(4) and 13, if] the Commission determines that the applicant [~~meets the criteria set out in regulation[s 12 (4) and]~~ **13(4) meets the relevant requirements**], it [~~shall~~ **may**] recommend approval of the Plan of Work to the Council.

[1bis The Commission shall accompany any recommendation made under paragraph (1) approval with:

[(a)][a summary of [the deliberations of the Commission including what inputs have been taken into account and how these have been assessed, as well as] divergences of opinion in the Commission, if any];

[(b)]any conditions the Commission considers appropriate to deal with adverse effects of the proposed activities; and]

[(c)]a draft Contract.]

2. The Commission shall not recommend approval of a proposed Plan of Work if:

[(a)]The Commission is unable to determine that the Plan of Work [either alone or in combination with other activities and impacts] ensures effective protection of the marine environment, based on the criteria set out in Regulation 13 (4) (e) and (f)], on the basis of Best Available Scientific Evidence, and applying the precautionary approach.]

[(a) alt. Pursuant to regulation 13(4) (e) and (f), the Plan of Work fails to provide for the effective

protection of the marine environment from harmful effects that may arise from the proposed activities, or if the information is sufficiently uncertain or inadequate to determine, pursuant to regulation 13(4) (e) and (f) that the Plan of Work provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities.]

(b) part or all of the area covered by the proposed Plan of Work is included in:

~~[(i) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant] -~~

(ii) A Plan of Work approved by the Council for Exploration or Exploitation of other Resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved Plan of Work for other Resources;

(iii) An area disapproved for Exploitation by the Council pursuant to article 162 (2) (x) of the Convention; or

~~[(iv) an Area of Particular Environmental Interest or any other site disapproved for exploitation by the Council[, or that sets a spatial or temporal protective measure], as determined in the applicable Regional Environmental Management Plan;~~

~~[(v) any other area designated for preservation for reasons of special biological, scientific, archaeological, historic, cultural, aesthetic or wilderness significance;]~~

(vi) A Reserved Area or an area designated by the Council to be a Reserved Area, except in the case of eligible applications under these regulations made in respect of a Reserved Area.

~~[(vii) An area that has not been subject to prior exploration activities].~~

~~[(viii) An area not covered by a Regional Environmental Management Plan].~~

~~[(c) Such approval would undermine or contradict the regional goals, objectives or measures set out in the applicable Regional Environmental Management Plan.]~~

~~[(d) Such approval would pose a reasonable risk of damage to an in-service or planned submarine cable or pipeline, or cause undue interference with the freedom to lay submarine cables and pipelines when considered in conjunction with other approved Plans of Work[or is otherwise unable to give reasonable regard to other marine users in the area under application].]~~

~~[(e) There is inadequate or substandard environmental baseline information for the area covered by the proposed Plan of Work, or any part of that area.]~~

2bis: The Commission shall not recommend approval of a proposed Plan of Work if the applicant, its controlling shareholder or shareholders or its predecessor in law previously violated the general obligations of contractors in a non-negligible way.

3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:

(a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work **as set out in the relevant Standard [taking into account relevant Guidelines]**; or

(b) The total area allocated to a Contractor under any approved Plan of Work would exceed:

- (i) 75,000 square kilometres in the case of polymetallic nodules;
- (ii) 2,500 square kilometres in the case of polymetallic sulphides; or
- (iii) 1,000 square kilometres in the case of cobalt-rich ferromanganese crusts; or

~~[(d) Such approval would permit a State party or entities sponsored by it to monopolize or significantly control the production of any single mineral or metal produced globally; or]~~

4. If the Commission determines that ~~it will not recommend approval of the Plan of Work for any reason~~~~the applicant does not meet the [criteria requirements] set out in regulation[s 12 (4) and 13] [(4)],~~ the Commission shall so inform the applicant in writing by providing the reasons why any ~~[criterion has requirements have]~~ not been met by the applicant, and provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant. ~~During this period the Commission shall not make a recommendation to the Council on the application.~~

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

Regarding para 1, we consider the amendment from ‘shall’ to ‘may’ in paragraph (1) very important. It is crucial that the LTC (and thus the Council) retains a general discretion to approve or disapprove the Plan of Work, and that exploitation is not approved in circumstances that would contravene UNCLOS or the policies and principles adopted by the ISA. We note that paragraph (2), which sets out circumstances in which the LTC must not recommend approval, does not include matters specifically protected by UNCLOS, such as human health and safety, benefit to humankind as a whole, the ISA and sponsoring State’s ability to control the activities etc. The use of ‘may’ in this paragraph (1) allows all relevant criteria to be taken properly into account.

On para 2, we support inclusion of either 2(a) or (a) alt.

We support all the sub-paragraphs that are proposed for DR15(2). We highlight in particular the importance of sub-paragraph (b)(iv) and (c) which relate to REMPs. As noted by the co-facilitators’ comment, a REMP is a policy document, the objectives in a REMP, or the description of APEIs or similar sites in the REMP, have no specific legal effect on their own. A Council decision or regulations - such as this provision - is required to give such areas legal effect.

On para 3, and subparas (a), (b) and (c), we agree with the comment from the co-facilitators, as well as numerous delegations in the past, that the ISA needs to agree a definition of ‘monopolization’ to be applied for the purposes of contract approval. UNCLOS Annex III, Article 6(3)(c) contains one example of possible monopolization. But that applies only to developed States with nodule contracts (and not to non-State Contractors, any entity operating in reserved areas, or any crusts or sulphides contracts); and sets an almost unattainable threshold of geographic coverage before monopolization is deemed to have occurred (e.g. 2% of the Area). A broader proposed definition for monopolization should be provided in the Regulations. This could be done by a new insertion of a defined term in the Schedule to the Regulations. We note there is suggested text in this regard, in the OEWG’s facilitator text (which refers to 75% of the ore extracted from the Area at any time). We are open to this definition, though would like first to understand more about the rationale behind it. This seems like an important policy point, and we think it may be a subject upon which Council could request a considered and expert recommendation from the LTC.

We suggest a new sub-paragraph (d) to prevent contract approval before the necessary Environmental Standards have been adopted. This mirrors, and gives effect to, the language already proposed in DR45(3).

In paragraph 15(4) we would prefer to delete specific references to DR12 and 13, because there are additional reasons and criteria why the LTC may decide not to recommend approval - e.g. those contained in DR 15(2) and

(3). So we suggest this should read 'If the Commission determines that it will not recommend approval of the Plan of Work for any reason...'