

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> 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](mailto:council@isa.org.jm).*

**1. Name of Working Group:**

President's Text

**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 18

**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.**

1 (a) Explore for the specified Resource category in accordance with the approved Plan of Work and these Regulations ~~[paragraph 7 below]~~ ~~[relevant Standards and taking into account any Guidelines, in accordance and with Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices, and Best Available Techniques]~~; and

(b) Exploit the specified Resource category in the Contract Area in accordance with the approved Plan of Work ~~[and regulations 18bis and 18ter]~~ ~~[these Regulations]~~, provided that ~~[production]~~ ~~[mining operations]~~ shall only take place in approved Mining Areas ~~[and subject to prerequisites prescribed under regulation 25(6)].~~

4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended or terminated except ~~in observance of the applicable rules, regulations and procedures, as well as~~ in accordance with ~~the terms [thereof]~~ ~~[set out in articles 18 and 19 of the Annex III of the Convention].~~

5. An exploitation contract shall not confer any interest or right on a Contractor in or over any other part of the Area or its Resources ~~or any other part of the Marine Environment~~, other than those rights expressly granted by the terms of the exploitation contract or these regulations.

7. In relation to ~~E~~exploration activities in the Contract Area conducted under an exploitation contract:

a. A Contractor may conduct Exploration activities within the Contract Area, in accordance with the proposed Exploration programme included in the Mining Workplan, ~~the applicable Exploration Regulations shall continue to apply as set out in the relevant [Standards and/or] [Guidelines].~~

b. ~~In particular,~~ the Contractor shall ~~[be expected to] continue to [show]~~ exercise due diligence in conducting ~~E~~exploration activities in the Contract Area, ~~together with the payment of applicable fees and~~ ~~the~~ and shall reporting of such activities and its the results of any Exploration activities to the Authority in accordance with ~~the applicable Exploration Regulations, including under~~ regulation 38 (2)(k) and relevant Standards, taking account of Guidelines.

c. The Contractor shall also take into account:

1. any recommendations issued by the Commission pursuant to the Exploration Regulations, and
2. provisions of the Exploration Regulations that relate to the protection and preservation of the marine environment, and environmental baselines and monitoring.

d. In order to progress from Exploration to Exploitation of a site within the Contract Area, where such Exploitation activity was not covered by the agreed Plan of Work, the Contractor must submit a new environmental impact statement and revised Plan of Work, in accordance with regulation [46bis] and which must be approved by the Authority in accordance with regulations [12-16].

#### ***Regulation [xxx] Termination of Contract***

*1. An exploitation contract can only be terminated:*

- a. *by all parties to the contract by mutual consent;*
- b. *by the termination of State sponsorship, in accordance with regulation 21;*
- c. *by the Contractor in accordance with the terms of the contract, as covered by section 10 of the Annex X to these regulations;*
- d. *by the Authority in accordance with the terms of the contract, as covered by section 12 of the Annex X to these regulations; or*
- e. *by expiry of the term of the contract, without renewal.*

*2. Any suspension or termination of a contract by the Authority shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. The suspension or termination shall be effective 60 Days after such written notice, unless the Contractor within such period disputes the Authority's right to suspend or terminate the contract in accordance with Part XI, Section 5, of the Convention, in which case the contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.*

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

In para 1, we could recommend merging subparagraphs (a) and (b) in order to avoid repetition and ensure consistency. For subparagraph 1b, we suggest deletion of the proposed insertion at the end, which cross-refers to DR25(6). While not an incorrect reference, it is unclear why this Regulation that imposes an obligation on Contractors would be referred to here, rather than any other. All Contractors are required to adhere to all of the Regulations (see DR 18bis), including DR 25(6), without this needing to be repeated.

On paragraph 4, we welcome the suggested changes and rationale provided by the facilitator and have some minor amendments to streamline the text.

Regarding paragraph 5, 'The Area or its Resources' omits any living resources, any resource located above the seafloor, any area of the high seas or within national jurisdiction etc. as such we recommend after 'Area or its Resources' adding 'or any other part of the Marine Environment'.

Lastly, we note that Exploration requirements under an Exploitation contract may be more complex than is envisaged in paragraph (7).

The current statement that 'applicable Exploration Regulations shall continue to apply' is confusing to us. Many of the Exploration Regulations cannot logically apply to an Exploitation Contractor's Exploration in their contract area such as how to apply for an Exploration contract, or relinquishment, others would impose an unfair duplicative burden if applied such as annual fees, training programme, and others could cause confusion by overlapping inconsistently with the Exploitation Regulations such as through responding to incidents, and annual reporting. By our analysis there may be only three provisions within the Exploration Regulations that are applicable to exploration under an

Exploitation Contract, namely those pertaining to baselines, protection of the environment, and LTC recommendations. We consider it is fairer and clearer to be explicit about which are applicable and which are not. Another option would be to issue Standards and Guidelines that entail more specific instructions for Exploitation contractors on which Exploration Regulations apply and which ones do not, which may be the intention in paragraph 7(a)?

For these reasons, we would recommend that the ISA retains the Exploitation Regulations as the primary governing document for all activities conducted under an Exploitation contract, while also incorporating the LTC Recommendations produced in relation to the Exploration regime, on matters such as baseline data collection, environmental impact assessment of exploration activities, and reporting of exploration data - as well as the three relevant Exploration Regulation provisions that pertain to the same matters. We would also recommend that this paragraph detail the application process to commence Exploitation in a site located within a Contract Area not covered by the original EIS for Exploitation.

Separately, as we have mentioned in the ICE working group, the regulations should provide a provision that specifies all potential circumstances for termination of a contract. While it is not clear to us if this is the correct placement in the regulations - we believe the regulations should set out the conditions for the termination of a contract, and clarity on the procedure through which the Authority can take such an action.