

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup>  
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](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 26

**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. The Contractor [shall] [~~will make best efforts to~~] maintain Commercial Production in accordance with the exploitation contract and the Plan of Work annexed thereto and these regulations, [~~and market conditions~~]. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates contemplated in [the Mining Workplan, as may have been updated on the basis of the Feasibility Study in accordance with regulation 25.](#)
2. [The Contractor shall notify the Secretary-General [~~and the Sponsoring State or States~~] if it:
  - (a) Fails to comply with the Plan of Work [in which case \[...\]](#); or
  - (b) Determines that it will not be able to adhere to the Plan of Work in future [in which case the Contractor shall request a modification of the Plan of Work, in accordance with regulation 57.](#)
3. Notwithstanding paragraph 1 above, the Contractor shall [~~temporarily~~] [~~immediately~~] [~~reduce or~~] suspend production whenever such reduction or suspension is required to protect the Marine Environment [from \[~~Serious Harm or a threat of Serious Harm~~\]](#) or to protect human health and safety [~~to protect the Marine Environment from Serious Harm or a threat of Serious Harm, to protect human health and safety~~] or to protect human remains, objects or sites of archaeological or historical nature] [~~upon the receipt of emergency order pursuant to regulation [4(4) or on the Contractor's own decision that maintaining the level of production would result in Serious Harm or a threat of Serious Harm.~~] [Where the situation in question falls within regulation 33, the Contractor shall follow that regulation and the process it prescribes. In any other circumstances, a Contractor shall notify the Secretary-General \[and the Sponsoring State or States\] of such a reduction or suspension of production as soon as is practicable and no later than \[72\] \[24\] hours after production is \[reduced or\] suspended. The Secretary-General shall publish notice on the website of the Authority and shall notify the Council that production has been reduced or suspended.](#)
4. [A Contractor shall notify the Secretary-General as soon as it recommences any mining activities [after a reduction or suspension pursuant to paragraph \(3\),](#) and no later than 72 hours after such commencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a reduction or suspension has been addressed. The Secretary-General shall [publish notice on the website of the Authority and shall](#) notify the Council that production has recommenced.]

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

It appears from DR28(1) that the rate of mining contemplated in the Feasibility Study becomes an obligatory requirement for the Contractor. But the Feasibility Study is not a part of the Plan of Work or the exploitation contract (see Annex X), and nor is its content agreed or approved by the ISA. For this reason, it seems to us that it may be more legally sound for the Feasibility Study's results to inform an amendment to the Mining Workplan, and then for the mining rates to be set out in that revised Mining Workplan. Noting that the Mining Workplan is part of the Plan of Work Contract, is subject to ISA approval, and is already supposed to contain details of expected recovery rates (see Annex II). So we suggest to amend reference here from the 'Feasibility Study' to the Mining Workplan, as may have been updated following the results of the Feasibility Study.

The drafting in DR28(2) is unclear: does this refer to any failure to comply with the Plan of Work (in which case, why is it in DR28 entitled 'Maintaining Commercial Production' or does it refer to a failure to maintain Commercial Production (in which case it should say that). Paragraph (2) also fails to address what happens if the Contractor notifies the SG of such non-compliance, or inability to adhere to the Plan of Work. This should be added.

The contract and Plan of Work should provide a reasonable programme for production, to be approved by the Council in a contract. If the Contractor fails to meet that production rate, it can be addressed through a review of the Plan of Work - we proposed this to be added to paragraph (2)(b).

There appears to be some extraneous wording in paragraph (3) as revised, which should be deleted. We largely agree with the text with that amendment made (as above), though would recommend introduction of 'immediately' to indicate the time urgency of the suspension in these circumstances (as opposed to voluntary suspension for commercial reasons, covered by DR29).

We also note that there is a possible overlap between DR28 (suspension of production due to anticipated harm to the environment or human health) and DR33 (not proceeding with Exploitation due to anticipated Incident), but each prescribes different processes. We suggest that DR28 could cross-refer to DR33, and prefer that process to be followed, in the event of an Incident.

On para 4, DR28 does not contain any content to enable the ISA to prevent a situation where a suspension declared by the Contractor may continue indefinitely. This should be addressed, because otherwise a contractor may be incentivised (after its profitable period of commercial production), to 'suspend' activities indefinitely, giving reasons relating to environmental protection for example, but really in order to avoid moving to closure (given the expenses associated with closure activities). This is a practice observed with land-based mining, where the regulatory regime has not properly empowered the regulator to identify a de facto closure situation, being disguised as reduced or suspended production