

**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 for the Protection and Preservation of the Marine Environment

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 46bis

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.

We recommend merging elements of 46bis with 46ter and deleting this regulation. We have provided proposed edits in our 46ter submission.

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

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1. ~~1-bis~~ ~~Alt~~ [A Contractor shall develop, implement and maintain an ~~E~~environmental ~~M~~management ~~S~~system, in compliance with the Standards and taking account of the relevant Guidelines and in accordance with Best ~~Available Science and Scientific Information~~, Environmental Practices and Good Industry Practice and internationally recognized standards.
2. An ~~E~~environmental ~~M~~management ~~S~~system shall, ~~[inter alia]~~:
 - (a) Deliver the Authority’s environmental objectives in the ~~{area under application}~~ [Contract area including those] ~~{as}~~ reflected in the ~~{applicable Regional Environmental Management Plan and the}~~ Applicant’s Environmental Management and Monitoring Plan, ~~[and taking into account the applicable Regional Environmental Management Plan]~~ as well as any additional objectives as set by the Contractor or Sponsoring State;
 - (b) Be ~~[reviewed and undergo]~~ ~~[audited]~~ ~~[annual]~~ ~~periodically~~ ~~[audits]~~ by an independent recognized and accredited international or national organization, in accordance with applicable Standards and Guidelines, ~~[at an interval to be agreed to by the Legal and Technical Commission and the Contractor]~~; and
 - (c) Facilitate effective reporting to the Authority in connection with environmental performance, pursuant to Regulations 33, 34, 38, 39, and 52.~~(ed) ——— Undergo periodic review and include the results of the audit, and any in the Contractor’s annual reports and the performance assessment of the Environmental Management and Monitoring Plan under Regulation 52.~~
3. ~~[All changes made to a Contractor’s Environmental Management System, for example resulting from reviews and audits, shall be reflected in the Contractor’s annual reports and in the performance assessment of the Environmental Management and Monitoring Plan under Regulation 52].~~ A proposed ~~[material]~~ change to a Contractor’s Environmental Management System shall be treated the same as a modification of a Plan of Work, pursuant to Regulation 57.

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

Regarding paragraph 1, we the facilitators comment with regards to inserting reference to “Best Available Science and Scientific Information” to align the text with the BBNJ wording. We generally would support all efforts to harmonise the texts in this way. However, in this specific instance, we would prefer to see ‘Best Environmental Practices’ (BEP) used here. It is our view that the term ‘Best Environmental Practices’ should encompass the use of Best Available Scientific Information, as well as Best Available Techniques, and that this should be made clear in the definition for BEP. If this suggestion is taken on board then reg 2(d) is redundant and can be deleted.

Regarding paragraph 2(b), our preference would be for the audit to occur annually, instead of “periodically”. The EMS is an essential part of the contractor’s environmental management regime, and environmental compliance relies to a large extent on the EMS working effectively. As such this is an area where the ISA should not be slow to require stringent checks.

We believe that subparagraph d is duplicative of paragraph (b). We fully support that the EMS audit reports should be covered in the annual report and taken into account in the performance assessment of the Environmental Management and Monitoring Plan. But, would suggest this be covered in the respective draft Regulations 38 and 52 pertaining to annual reports and performance assessment of the EMMP, rather than here.

Lastly regarding paragraph 3, we recommend deleting ‘material’, which refers to ‘proposed material change’. Any proposed change to the Plan of Work, or in this case the EMS, is subject to Regulation 57, which dictates the responsibility of determining whether a change is material to the LTC. The use of ‘material’ in this paragraph invites confusion as to whether the Contractor can make this determination in this case, which we don’t believe is the intention.