

**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 46ter

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. Each applicant or Contractor for eExploitation shall prepare an Environmental Management and Monitoring Plan in accordance with this regulation and Annex VII.
2. The purpose of an Environmental Management and Monitoring Plan is to manage and confirm that observed Environmental Effects ~~are consistent with predicted Environmental Effects from the Environmental Impact Assessment and does not breach any of the Rules of the Authority, including meet~~ Standards on environmental quality objectives and indicators and quantitative environmental thresholds ~~environmental performance for the mining operation~~. The plan shall address any issues that arise from the Environmental Impact Statement and set out commitments and procedures, including the implementation of an environmental monitoring programme, to monitor, Mitigate and manage the Environmental Effects of Exploitation ~~will set out commitments and procedures on how the eEnvironmental Effects of the mining operation will be monitored and mitigated,~~ including on pollution control and Mining Discharge in Regulations 49 and 50.
3. The Environmental Management and Monitoring Plan shall include all elements and matters ~~[in the form and deliver the contents]~~ prescribed by the Authority in Annex VII to these regulations and shall:
 - (a) Be based on the Environmental Impact Assessment and the Environmental Impact Statement;
 - (b) Be prepared in accordance and consistent with the applicable Regional Environmental Management Plan, ~~[including any thresholds set out herein]~~
 - (c) Be prepared in accordance and consistent with the applicable Standards ~~[and thresholds of the Authority] developed in accordance with Regulations 45 and 94 [and taking account of the applicable Guidelines, as~~

well as] Good Industry Practice, ~~Best Available Scientific [information]Evidence~~, Best Environmental Practices ~~and Best Available Techniques~~, [~~taking account of the applicable Guidelines~~];-

(d) Be prepared in accordance and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan;

(e) Incorporate site-specific environmental objectives and environmental performance standards, which are compatible with and designed to achieve the environmental policy and objectives of the Authority and applicable Standards;

(f) Incorporate measurement criteria, [~~internal~~] ~~thresholds [of the Authority defined in the~~ in accordance with the applicable Standards]-and reflect its methodology to determine whether the environmental ~~quality~~ objectives ~~and quantitative thresholds~~ are being met and that the operation is compliant with ~~applicable environmental Standards and other~~ the Rules of the Authority,

(g)~~Reflect any conditions recommended~~ [~~Incorporate any recommendations made~~] by the Commission, and approved by the Council, in its consideration of the Environmental Impact Statement, including [~~will set out~~] commitments and procedures on;

- i.how the ~~environmental [and archaeological] impacts~~ Environmental Effects of Exploitation ~~the mining operation~~ will be monitored ~~in accordance with Regulation 46 [bister,] [the EMMP Standard] and the [Environmental Management Plan] applicable Monitoring Standard,~~
- ii.how the Mitigation measures, including pollution control and Mining Discharge in regulations 49 and 50, will be implemented,
- iii.how the effectiveness of such measures will be monitored,
- iv.how Preservation Reference Zones and Impact Reference Zones, designated in accordance with Annex [Xter], will be [~~respected~~] [~~utilised and implemented,~~]
- v.what the management actions and responses will be to the monitoring results and new knowledge
- vi.what management and reporting systems will be adopted and followed, and;
- vii.how continual improvement will be promoted, including by testing assumptions and predictions made in the Environmental Impact Statement, improving environmental knowledge, and reducing residual uncertainties remaining from the environmental impact assessment process.

3bis. [~~The Contractor shall conduct monitoring for the entire duration of exploitation~~]. In addition to the ~~mMonitoring required to be~~ environmental monitoring programme performed by the Contractor, the Environmental Management and Monitoring Plan shall contain a supplementary monitoring programme for at least the first seven years of [~~Exploitation~~] [~~mining operations,~~] to be conducted by ~~competent~~ independent experts and in compliance with the applicable Standards. The Contractor shall ~~implement its Environmental Management and Monitoring Plan, including its environmental monitoring programme, from the effective date of the contract until the satisfactory completion of its Closure Plan~~ ~~conduct monitoring for the entire duration of [exploitation] [the mining operation]~~ ~~and comply with any post closure monitoring requirements according to Regulations 59-61 and the applicable Standard.]~~

4. The Contractor shall provide information ~~[in its annual report]~~ on the implementation and compliance of the Environmental Management and Monitoring Plan pursuant to Regulations 51 and 52 ~~[in its annual report]~~ in accordance with regulations 38, paragraph 2(g), and 46bister, paragraph 4, for evaluation by the Legal and Technical Commission, as well as ~~[environmental data and information for]~~ publicly release, in an accessible format, consistent with Best Scientific Practices monitoring data and information at a regular basis ~~[to be determined in each project] [(real time or on a monthly basis). [Other monitoring data, for example pertaining to monitored variations in geochemistry or fauna, shall be released annually in the form of a written report.]~~

5. The Contractor shall allocate sufficient resources and assign roles and responsibilities to implementation of [Plan of Work/the Environmental Monitoring and Management Plan] in relation to the relevant risks and impacts.

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

In paragraph (2) we would like to see the purpose of the EMMP further expanded so that it will contain content designed to set specific commitments including to measure the observed Environmental Effects against those predicted in the EIS, and to monitor the Contractor's performance against all environmental rules of the Authority, including the Standards mentioned on quality objectives, and those on indicators and thresholds. As mentioned in our DR46bis submission, we recommend elements of that regulation be moved over to this regulation and that regulation be deleted. This paragraph could explicitly mention that the EMMP will include the implementation of an environmental monitoring programme.

Paragraph 3(c) could be further simplified by removal of reference to Best Available Scientific Information and Best Available Techniques, if these terms are included in the definition of 'Best Environmental Practices' in the schedule. We also query whether there is a need to refer specifically to regulations 45 and 94 here, if 'Standards' are separately referred to. In addition, the proposed edits in the President's text for the 'Rules of the Authority' definition we believe the second reference to environmental Standards can be deleted, as these are already included within the term 'Rules of the Authority'.

For Paragraph 3(f), it is our understanding that the measurement criteria mentioned here is the same as the indicators mentioned in DR 45 and that those indicators would be used to determine compliance with environmental objectives and quantitative thresholds. If that is indeed the case, we recommend this subparagraph be redrafted to clarify its relationship to the standards mentioned in DR45 and to keep the terminology consistent.

Paragraph (3)(g)(i) strays away from defined terms. We suggest replacing 'environmental impacts' with the defined term 'Environmental Effects', and 'mining operation' with the defined term 'Exploitation'. We also consider this sentence can be ended with the words 'will be monitored' without need to cross-reference other regulations or standards, which in part duplicates paragraph (3) above, and could be self-referential and therefore confusing.

Regarding paragraph 3 bis, wording could be added to clarify the relationship between the EMMP and the Contractor's environmental monitoring programme mentioned in para 2 (instead of 46bis). Additionally, we agree with the intent of the last sentence that the EMMP, and monitoring obligations contained therein, should be extended until all activities, including post-closure monitoring, cease. We consider this would be more clearly drafted by referring to the effective date of the contract, as the start date, and the satisfactory completion of the Closure plan, as the end date.

Regarding paragraph 4, we believe this can simply refer to draft Regulation 51, which pertains to 'Compliance with the EMMP' and already requires annual reporting and deals with data reporting frequency, and draft Regulation 52, which pertains to 'Performance Assessments of the EMMP' and requires reporting at least every 2 years.

Lastly, we wonder if paragraph 5 should be broadened to the entire Plan of Work. Paragraph 5 would seem to imply that this does not apply for other plans (Closure Plan, Mining Plan, etc). If amended, this provision could be moved to DR 18bis dealing with contractor obligations.