

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27<sup>TH</sup> SESSION:  
COUNCIL - PART III**

*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 Ocean Foundation, Observer

**3. Please indicate the relevant provision to which the textual proposal refers.**

Part III: Rights and obligations of Contractors

Regulation 26 (Environmental Performance Guarantee)

**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 Contractor shall lodge an Environmental Performance Guarantee in favour of the Authority and no later than the commencement date of any production-Exploitation activities in the Mining Area. The Contractor shall be required to maintain an Environmental Performance Guarantee in the full amount required by the Council at all times until the satisfaction in full of all of its obligations that are the subject of the Environmental Performance Guarantee, and shall ensure that the funds available to satisfy its obligations under the Environmental Performance Guarantee be promptly replenished to the full amount required by the Council following the drawing of any amounts thereunder.

2. (a) ter. ~~Responding to, and remediating, a significant~~ environmental Incident;

4. The amount of the Environmental Performance Guarantee shall be reviewed and updated annually, by the Council, taking into account the recommendation of the Commission and Finance Committee.

5. The Council, taking into account the recommendation of the Commission and Finance Committee ~~A Contractor~~ shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date, and the Contractor shall promptly lodge a revised guarantee in favour of the Authority.

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

Section 1: The Environmental Performance Guarantee should be paid prior to any exploitation activities, not just “production”. Damage to the seabed and ecosystem can be caused by pre-

production site surveys, test runs, etc. Lastly, it should be clear that the Environmental Performance Guarantee must outlast the contract, since environmental restoration/ remediation obligations may go on for decades after closure. Lastly where an Environmental Performance Guarantee is drawn upon, whether in full or in part, the Contractor should be obligated to top it back up to the full required amount. Section 2(a) ter.: We welcome the inclusion of Section 2(a) ter. as set out in the March 3 markup. It is crucial that the Environmental Performance Guarantee not only cover decommissioning and post-closure monitoring, but also the costs of remediating and environmental incident, and the regulations should be updated to address this throughout. However, the word “significant” should be removed as it is duplicative. The definition of “Incident” includes “Serious Harm to the Marine Environment”, and “Serious Harm” in turn means “means any effect from activities in the Area on the Marine Environment which represents a significant adverse change in the Marine Environment...” We do not understand the contradiction between the first sentence of section 3 as proposed in the March 3 markup, which provides that “The Council shall decide the amount of an Environmental Performance Guarantee in Standard taking into account the recommendation of the Commission and Finance Committee”, (with which we agree) and proposed new section 4/existing section 5, which provide that “The amount of the Environmental Performance Guarantee shall be reviewed and updated [annually by the Contractor]” and “A Contractor shall, as a result of any review under paragraph 4 above, recalculate the amount of the Environmental Performance Guarantee within 60 Days of a review date and lodge a revised guarantee in favour of the Authority” . The Contractor should not have the right to unilaterally recalculate the amount of the Environmental Performance Guarantee that it is obligated to provide – this should be the exclusive right of the Council to determine otherwise it completely undermines the whole purpose of the guarantee. The regulated should not be the regulators.