

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH 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.

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 23: transfer of rights and obligations under an exploitation contract

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.

4. The Commission shall consider whether the transferee:

(a) Meets the requirements of a qualified applicant as set out in regulation 5;

(b) Has submitted a certificate of sponsorship as set out in regulation 6;

(c) Has submitted a form of application as set out in regulation 7 ~~if the Secretary General considers that there is a Material Change to the Plan of Work;~~

7. Where the Commission determines, in its sole discretion, that the requirements of paragraphs 4, 5 and 6 above have been fulfilled, it shall recommend approval of the application for ~~consent transfer~~ to the Council. In accordance with article 20 of annex III to the Convention, the Council shall not unreasonably withhold consent to a transfer if the requirements of this regulation are complied with. In the event an applicant for the transfer of an Exploitation Contract fails to demonstrate to the satisfaction of the Commission that the requirements of paragraphs 4, 5, and 6 have not been fulfilled, the Commission shall not approve such transfer. In the event of any transfer arising out of a d change of control of the Contractor where the Commission determines that the requirements of paragraphs 4, 5, and 6 have not been fulfilled, the related Exploitation Contract shall terminate automatically.

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

As currently drafted, section 23, part 4(c) only requires transferees (including mortgagees/ transferees of mortgagees) to submit a new application “if the Secretary-General considers that there is a Material Change to the Plan of Work”. The application contains the financial plan, all of the information about the potential applicant including corporate structure/ beneficial ownership, audited financial statements, and other crucial pieces of due diligence that the Commission needs in order to vet potential transferees. Therefore section 23, part 4(c) should require the submission of a new application upon any transfer of an exploitation Contract, whether it be due to foreclosure or otherwise (rather than limiting this to situations where the Secretary-General considers that there is a Material Change to the Plan of Work). Furthermore, the determination of what constitutes a “Material Change” should not be left to the discretion of the Secretary-General but rather should be a decision left to the Commission. Per our comments to Section 24 below, all changes of control of a Contractor should be subject to the same consent and approval requirements of Section 23. However, where an Exploitation Contract has already been so transferred without the consent of the Council via a change of control, it should automatically terminate, otherwise there would be no consequences for Contractors to engage in unauthorized transfers via changes of control.