

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING 29TH 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.

1. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

2. Please indicate the relevant provision to which the textual proposal refers.

DR 107

3. 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.

3. The Council shall ~~establish a process that~~ gives Contractors and Stakeholders adequate time and opportunity to comment on proposed revisions to these Regulations **in accordance with the Authority’s policy and procedure for public consultation and participation and regulation [insert reference to regulation that provides details for ISA consultation procedures]**, save for the making of an amendment to these Regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

~~[5. Any amendments to these Regulations adopted by the Council and the Assembly, shall not be applied retroactively to the detriment of the Contractors that have already signed an Exploitation Contract with the Authority.]~~

5 Alt. The Council may incorporate an appropriate transition period for implementation by existing Contractors of any amendments to these Regulations.

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

Paragraph (3), aiming to cover Stakeholder consultation on revision to the Regulations, is welcome but inadequate. More detail than is required to establish meaningful public participation in decision-making by the ISA. We would like to see a general provision in the Regulations or a policy document that sets minimum standards and standardised requisite procedures for all consultations run by the ISA (as opposed to consultations run by Contractors, which are the subject of DRs 93 (bis) and (ter)). As a body accountable to all of humankind, taking decisions with potential to affect the global environment, formalised processes to ensure appropriate access to information, and public participation in decision-making mechanisms should be paramount for the ISA. But currently appear sorely lacking.

We are concerned by the retention of paragraph (5) and deletion of paragraph (5)(alt). Given the lack of industry track record, lack of ISA regulatory experience, and the planned length of exploitation contracts (of 30 years, plus extensions), it is important that the ISA retains discretion to amend aspects of the regulatory regime and apply such amendments to existing Contractors where this is required for the ISA to meet its UNCLOS duties. Amendment by the Council of their Regulations is not the same as an amendment of the Contract. Indeed, the draft contract terms in Annex 10 already say that the Contractor must comply with the regulations *as amended from time to time*. There are already some aspects of the regulations that specifically envisage being amended during the term of the contract (e.g. DR82 on rates of payment, and DR105 on the inspection regime). So it is important that this DR107(5) enables those provisions and does not undermine them, or the ISA’s ability to regulate appropriately, in the light of changing circumstances that may arise.