

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29<sup>TH</sup> 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](mailto: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.**

48ter

**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. [...] in particular to ensure that the Marine Environment is effectively protected from harmful effects/~~serious harm~~, including the cumulative effects, in accordance with Article 145 of the Convention.

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

We welcome the additional information provided by proposed DR48(ter) and strongly support the necessity of test-mining to validate data and predictions in the EIS that would otherwise lack empirical evidence-base, and lead to decision-making on low-confidence information.

However, we would suggest a different approach to DR48ter’s proposal, to streamline the process. We recommend that the definition of test mining provided in paragraph (2) is moved to the Schedule of the Regulations, and that test mining data is included as a specific requirement of the EIA and EIS (via DRs 47 and 48, or simply via the EIS template in Annex IV). Test mining results can then inform the ISA’s evaluation of the application for a Plan of Work for Exploitation. Such test mining information will be particularly invaluable at that stage, not only in increasing the data confidence of the EIS, but also in informing the LTC’s assessment of the applicant’s technical capabilities as well as their abilities to ensure effective protection of the Marine Environment. Standards can set out more detail for what specifically is required to constitute valid and adequate test mining.

This approach avoids the need for an additional report from the Contractor, and review and decision process by the ISA, which would otherwise somewhat duplicate the resource-intensive application and review process, just shortly after that had occurred. Our recommended approach also avoids a situation, unappealing to all parties, in which the ISA may permit Exploitation via a Contract grant, but then prevent the Contractor from moving to Commercial Production on the basis of test-mining results that submitted after the Contract has been granted.

Finally, it addresses the open question of what ‘prior approval’ is intended by paragraph (3). The ISA already has rules and approval processes for EIAs for test mining, under the Exploration Regulations. Though in this regard, we reiterate our strong recommendation that those rules for EIA under Exploration require urgent strengthening.

If our approach to test mining is adopted, then this DR48(ter) can be deleted, with relevant insertions being placed in the Schedule and in the Regulations and Annex relating to EIA and EIS instead, as indicated above.

We do also support the intention of paragraph (5), to have a period of validation monitoring after Contract commencement but before Commercial Production and for the Contractor to report on this to the ISA, either to confirm the original Plan of Work remains valid or to apply for a modification under DR57 before full-scale mining commences. But we think this should be incorporated into DR 25 (‘Documents to be submitted prior to

production'), not here. In fact, such validation monitoring report should in our view replace the reference to the 'Feasibility Study' currently in DR25(1) whose purpose and content is unclear to us.

As a general drafting point, the use of '/' to denote potential options, such as between 'harmful effects/serious harm' in para 3; or EIS/Plan of Work in paras 8 and 9 are inappropriate for regulatory language. Substantively speaking we note that 'Serious harm' is not the threshold for effective protection, so 'harmful effects' should be sufficient.