

**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.**

53 ter

**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.**

1. A Contractor shall not ~~introduce any Mining Discharge~~ dispose, dump or discharge into the Marine Environment ~~any Mining Discharge~~, except where such ~~disposal, dumping or discharge~~ Mining Discharge is permitted in accordance with:

(a) The assessment framework for Mining Discharges as set out in the ~~[applicable]~~ Standard;

(b) The Environmental Management and Monitoring Plan; and

~~[(c) [Relevant] Internationally agreed rules, standards and recommended practices and procedures, [as set out in the applicable Standard] [and established by the International Maritime Organization].]~~

~~[(c) alt. These Regulations.]~~

2. ~~Paragraph 1~~ [Notwithstanding paragraph 1, a Contractor may make such ~~above shall not apply if such~~ disposal, dumping or discharge Mining Discharge into the Marine Environment [where it] is necessary for the safety of the vessel or Installation or the safety of human life, provided that such disposal, dumping or discharge Mining Discharge is conducted so as to [prevent minimize the possibility of] harm to [human life and to] the Marine Environment. If Harm to the Marine Environment occurs as a result of disposal, dumping or discharge, the Contractor shall, [upon safe working conditions being restored,] monitor, mitigate and [manage remediate] the impacts of such harm, and shall report forthwith about such disposal, dumping or discharge to the Authority. [Such disposal, dumping or discharge Mining Discharge shall constitute an notifiable event Incident under Regulation 34 ~~33~~ and Appendix 1.]

...

4. [A The applicant or] Contractor [shall must also] keep a register of [mining] discharges, to be updated [immediately after any discharge event at least monthly,] where possible, that shall be reported annually to the Authority [under Regulation 38,] as part of the [Contractors] mandatory annual report that must be prepared throughout the operation.

[4. Alt. The applicant or Contractor must continuously monitor its Mining Discharges and maintain a register that is reported to the Authority least weekly in addition to the mandatory annual report pursuant to Regulation 38.]

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

In relation to this DR 53 ter generally, we note that 'Mining Discharge' is defined in the Schedule to the Regulations as '*any sediment, waste or other effluent directly resulting from Exploitation including shipboard or Installation processing immediately above a mine site*'. We are not quite clear from this if it would include seawater that has been 'cleaned' to a certain degree. What type of granularity represents '*sediment*'? What if the substance to be discharged is thoroughly cleaned water, but of a different temperature or chemical composition? We propose this needs to be clarified, either in the definition contained in the Schedule, or in the assessment framework mentioned in DR 53 ter, paragraph (1)(a).

In regards to paragraph (1), we note that disposal, dumping, and discharge as well as other forms are included in the Mining Discharge definition. As such, we think this provision should be streamlined by simply using the term "Mining Discharge".

We prefer paragraph (1)(c)(alt.) to (1)(c). In our view it is the jurisdiction of the ISA to regulate (via these Regulations) such sediment, effluent and any other waste products generated from Exploitation. If the ISA wishes to consider the precedents of other bodies or practices in developing its own rules, it should include that in the assessment framework. But it is important to note that IMO treaties refer to shipping discharges, not deep seabed mining discharges. It seems to us ill-advised to conflate these two types of waste streams in the Regulations. As such, it should be the role of the ISA to establish precisely what the rules are for mining discharges created by Exploitation. We have also proposed in our comment on DR 53 bis a cross-reference to relevant IMO treaties in that provision. In case useful, we wish to highlight a recent legal analysis produced by Pew in relation to such jurisdictional issues which may prove useful here: <https://www.pewtrusts.org/-/media/assets/2024/03/code-project---enforcement-of-deep-sea-mining-regulations-at-sea.pdf>.

We also consider that the situation envisaged in paragraph (2): an otherwise prohibited disposal into the Marine Environment deemed necessary for the safety of the vessel or human life, suggests a serious emergency situation, and as such should be classified as an "Incident" (not a "Notifiable Event"). This is important to ensure that relevant reporting and follow-up regulatory actions take place pursuant to DR 33. In addition, by classifying this as an "Incident", the Contractor is required to implement its Emergency Response and Contingency Plan immediately, which would include measures to ensure the safety of human life as well as measures to monitor the Marine Environment. In this regard, the second sentence of paragraph (2) (pertaining to environmental measures) is redundant and we propose deletion.

Regarding paragraph (4), we would prefer the (alt) paragraph, requiring a more regular reporting of Mining Discharges than the annual report. We understand that a Contractor should be continually monitoring the release of mining discharge in real-time and that return of waste from the mining operations to the ocean is likely to be one of the primary sources of environmental impact from Exploitation, so we do not see why that data should not be readily and regularly made available to the ISA, in its oversight capacity. This would be done in accordance with the Regulations' other provisions on Environmental Monitoring and the EMMP, so cross-reference to DRs 50 and 51 may be useful here.