

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 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.

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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 Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the Exploitation Contract [or by decision of the Council based on the recommendations of the Commission] in accordance with the applicable Standards and taking into account the applicable Guidelines, there have occurred any of the following events or changes of circumstance:~~

[1 Alt. ~~Activities under a~~A Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the Exploitation Contract, or more frequently at the request of the Commission or the Council, including where any of the following events or changes of circumstance have occurred:]

(a) A proposed Material Change in the implementation of the Plan of Work;]

~~[(a) bis. Identification of a new significant environmental risk, or a significant change to existing risk calculations;]~~

[(a) bis Alt. Information has come to light that was not available when the Plan of Work was approved and is relevant to the Contractor's continued adherence to the Strategic Environmental Goals and Objectives, including changes in Good Industry Practice, Best Available Techniques or Best Available Scientific Information~~Environmental Practice~~, and shows that more appropriate conditions are necessary to deal with the Environmental Effects of the activity;]

(a) ter. An indication that the ~~e~~Cumulative Environmental ~~e~~Effects of Exploitation ~~activities~~ exceed any environmental thresholds established under the applicable Standards [~~and objectives established under the applicable~~ Regional Environmental Management Plan;]

~~(a) quat. New significant information relevant to the effective Protection of the Marine Environment;~~

(a) quin. Adverse impacts on the environment or other activities have arisen that were not anticipated, or are of a scale or intensity that was not anticipated, when the Plan of Work was approved;

(a) sexies. A request by another international body concerning other activities or measure in the Marine Environment pursuant to Regulation 31;

(b) Any Incident;

(c) Recommendations for improvement in procedures or practices following an inspection report under Regulation 100;

(d) A performance assessment which requires action under Regulation 52(8);

~~(e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;~~

~~(f) Significant changes in Best Available Techniques;~~

~~(g) Significant changes in Best Available Scientific Information;~~

~~(g) bis Significant changes in Best Environmental Practices;~~

~~(h) Operational management changes, including changes to subcontractors and suppliers, whereby the Commission, after review with the Contractor of the Contractor's activities under the Plan of Work, shall recommend to the Council whether any modifications to the Plan of Work are necessary; [and][or]~~

(h) bis Changes in the overall policy of the Authority.

2. A review of activities under paragraph 1 shall be undertaken by ~~the Contractor and verified by an competent~~ independent experts ~~at the Contractor's expense~~ in accordance with the applicable regulations, Standards and taking into ~~consideration account the~~ Guidelines. The ~~[Secretary-General][or][and][the Contractor]~~ shall invite the Sponsoring State or States, and relevant coastal States, to participate in the review ~~and shall provide all information required by the competent independent experts~~. The results of the review shall be compiled ~~as in a report and submitted by the Contractor to the Secretary-General~~.

3. The Secretary-General shall forward the report ~~on under paragraph 2 each review~~ to the Commission and Council, and the Sponsoring State or States ~~and relevant coastal States~~. Where, as a result of a review, ~~the Council, Commission, Contractor or reviewer identifies that modifications need to be made to the Plan of Work Regulation 57 shall apply. Material Changes need to be made to the Plan of Work, the Commission shall recommend the relevant changes to the Council, and the Contractor shall implement them.~~

~~[3. Alt. The person or persons in charge of the review shall report on each review to the Commission and Council, the Sponsoring State or States and the relevant coastal States. Where, as a result of a review, the Council, Commission, Contractor or reviewer identifies that modifications need to be made to the Plan of Work Regulation 57(2) and, where applicable, Regulation 57(3) shall apply.]~~

~~4. For the purpose of the review, the Contractor shall provide all information required by the Secretary-General in the manner and at the times as may be necessary for the purposes of this Regulation.~~

...

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

We prefer paragraph (1)(alt) as it is more clear and clarifies which organs of the ISA are empowered to act in support of this regulation.

For paragraph (1)(alt), we prefer sub-paragraph (a)(bis)(alt), which incorporates relevant issues comprehensively (and if retained allows deletion of other sub-paragraphs e.g. (a)(quat.), (f), (g), (g)bis etc.). We believe this provision would also benefit by referencing the Strategic Environmental Goals and Objectives as set out in DR44ter or the Authority's environmental policy if DR44ter is moved to a policy document. This would provide a more objective benchmark for review rather than usage of the qualifier 'significant' used in those other sub-paragraphs.

For sub-paragraph (1)(alt)(e), we continue to recommend deletion of this text, recalling other Council members (and the facilitator) also raising this issue in the last draft. Financial capabilities are prerequisite criteria for Contract award. Failures to meet financial commitments in the Contract should be a trigger for compliance action by the ISA, not just a regular review process.

For paragraph (2), we note that an alternative to this paragraph which provided for the commissioning of independent experts to *conduct* this review has been deleted, in favour of this alternative text that provides for *verification* by independent experts only. We and some member States expressed preference for the former approach and would like reinsertion of this option. In any case, we believe that paragraph (2) needs an additional clause requiring the Contractor to submit its report to the Secretary-General, in order to make sense of paragraph (3) – which requires the Secretary-General to have a copy of the report.

We prefer paragraph (3)(alt) which makes a helpful connection between this regulation and DR57. Assuming an independent party is conducting the review, it makes sense that this party would present the review's findings to the relevant parties. With that said, the Secretary-General is the appropriate entity to forward the report to the respective parties, so we would recommend replicating language from the original paragraph (3) to this effect.

Previously-proposed edits to paragraph (4) would have confirmed an obligation to provide information to experts engaged in this review, but these have all been deleted without explanation. We would suggest that they be reinstated for further discussion, as providing information directly to experts will be the most efficient means of facilitating their review and that this would be better placed in paragraph (2) (in which case paragraph 4 can be deleted).