

**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. The Council, taking into account the recommendations of the Commission ~~and the Economic Planning Commission~~, may provide ~~[financial/Financial] Incentives~~ ~~{to Contractors and/or}~~ pursuant to Article 11 of Annex III to the Convention, ~~to Contractors entering into joint arrangements with the Enterprise, in accordance with the applicable Standards and taking into consideration Guidelines~~ ~~rules set out in Standards~~.

1. Alt. The Council may, taking into account the recommendations of the Commission and the Economic Planning Commission in accordance with the applicable Standard, provide for incentives, including Financial Incentives, on a uniform and non-discriminatory basis, to Contractors to further the objectives set out in Article 13 (1) of annex III to the Convention.

5. The Council shall not permit any incentive, or other arrangement from which a Contractor may benefit, that would infringe the prohibition against subsidisation contained in section 6 of the Annex to the 1994 Agreement, in accordance with any applicable Standards and taking into account Guidelines.

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

We generally support the changes to the proposed text since it most closely aligns with our reading of Article 13 paragraph 14 of Annex III – which is that the incentives relate to joint ventures with the Enterprise only. Along these lines we prefer the original paragraph 1 with some amendments, noting that Financial Incentives is a defined term and includes reference to Standards and Guidelines in its definition so these do not need to be repeated where the defined term is used.

We have concerns about the idea of financial incentives to encourage Contractors to go beyond legal obligations and best business practices. Reducing environmental impacts to as low as reasonably possible should be a requirement, not a bonus extra. Contractors should be obliged by the Regulations and their contract to employ ‘best environmental practices’. This should include the concept of continuous improvement, and Contractors should be benchmarked against each other, so that new methodologies with better environmental outcomes that may be developed for one contract become the standard required of others. We are concerned that introducing a system that rewards better environmental practices (a) undermines the meaning of ‘best environmental practices’ and implicitly allows that poorer practices are an option, and (b) may be open to abuse, such that financial benefits for humankind are driven down in return for protection of the marine environment. We prefer

that continually striving to improve environmental practice is a fundamental requirement of the contracts, with failure to comply leading to sanctions (rather than compliance leading to reward).

We would like to note that there is another prohibition on subsidisation in section 6 of the Annex to the 1994 Agreement which alludes to the agreements of what is now the WTO, and specifically says there shall be no subsidization of activities in the Area except as may be permitted under the agreements. We do not believe this provision has been operationalized in regulations nor considered by the Council. We suggest a new paragraph (5), in this regard, though we acknowledge this may also benefit from further detail to provide clarity on how this section of the 1994 Agreement will be interpreted and applied by the Authority.