

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.

DR 89

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.

2. “Confidential Information” means:

~~(a) [Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;]~~

3. “Confidential Information” does not mean or include data and information that:

~~(f) Relate to the Protection and Preservation of the Marine Environment, [provided that] [unless] the Secretary General may agree that such information is regarded as Confidential Information for a reasonable period where there are bona fide academic reasons for delaying its release;~~

~~{(f) Alt. Relate to the Protection and Preservation of the Marine Environment, provided that the Secretary General may designate such information as Confidential Information for a reasonable period, subject to such conditions as may be appropriate, where the Commission agrees that there are bona fide academic reasons for delaying its release on the terms proposed by the Secretary General and the decision including the reasons are reported to Council;}~~

~~{(f) Alt. 2. Are environmental data, including all baseline and monitoring information;}~~

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary - General the Information or any part of it as Confidential Information [describing, in general and nonprejudicial terms, any information redacted or required to be withheld from publication on the basis of confidentiality with an explanation of the reasons. The Secretariat shall publish a copy of any such notice received upon receipt]. If the Secretary-General, [a member state, or another Stakeholder] objects to such designation [within a period of 30 Days from the publication of the notice], the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this Regulation, [and consult the Data Committee as appropriate]. During the consultations, the Secretary- General shall take into account any relevant [policy guidance from the Council] [Standards and taking into consideration Guidelines]. [The Secretary-General shall report to the Council regarding the types and quantities of data that are designated confidential in accordance with this paragraph.] Any dispute arising as to the nature of the data and information shall be dealt with [through the administrative procedure described in [insert here cross-reference to relevant provisions or Annex of

the Regulations setting out administrative decision review procedures] [in accordance with Part XII of these Regulations].

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

Sub-paragraph (2)(a) of DR89, which seeks to retain long-term non-disclosure of Exploration data, is problematic and should be deleted. Applying two separate data classification regimes for Exploration and Exploitation simultaneously may lead to inconsistencies and confusion

Sub para (3)(f) – we prefer the alt 2 text. The drafting of the other proposals in sub-paragraph (f) and (f alt) seems inappropriately narrow. In our view, the ISA’s rules should designate all ‘environmental data’ as non-confidential as a default and should set reporting requirements that delineate properly between environmental information and commercially sensitive operational information.

For paragraph (5) we support all the proposed amendments that were shown in tracked changes in the Consolidated Text. In our opinion these are essential to counter-balance what would otherwise be an overly broad discretion provided via paragraphs (2)(d), (3)(l) and (5) to the Contractor (in consultation with the Secretary-General) to declare potentially large swathes of information as confidential.

Moreover, the proposed amendments in paragraph (5) provide a critical regulatory outlet for protecting against potential abuse of these confidentiality provisions and to ensure that Stakeholders are informed about what types of data Contractors may be collecting, even where it may not be specifically disclosed. We therefore also support the proposal to create (and reference in this Regulation 89) a specialised Data Committee with a delegated function to assess the designation of confidential information.