

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 94

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 Commission shall, taking into account the views of ~~[recognized experts]~~—**competent independent experts, [identified in accordance with Annex [insert correct number, once Annex has been prepared and added to the Regulations negotiating text][or add ‘Competent Independent Experts’ the Schedule as a defined term and capitalise it here]**✕, Stakeholders and relevant existing internationally accepted standards, [where applicable,] make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to, inter alia:

1 (c) An outcomes-based approach to regulation **where feasible**, which prescribes rigorous environmental outcomes while affording flexibility for the processes by which these outcomes are achieved to enable continuous improvement, particularly as technology advances.

2. The Council shall consider ~~[and approve]~~, upon the recommendation of the Commission and taking into account statements submitted by Stakeholders during a public consultation, the Standards, ~~provided that including whether~~ such Standards are consistent with the intent and purpose of the ~~r~~**Rules, regulations and procedures** of the Authority, including the decisions of the Council and the Assembly and, to the extent relevant, developed on the basis of Best Available Scientific Evidence, Best Environmental Practices, Best Available Techniques, and Good Industry Practice. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council. The Standards approved by the Council shall remain effective on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly.

3.The Standards contemplated in paragraph 1 above ~~shall may must~~ include both qualitative and quantitative standards, if applicable, and must include all the methods, processes and technology required to implement the Standards.

4. Standards or amendments thereto adopted by the Council ~~[and approved by the Assembly]~~ shall be legally binding on Contractors, member States and the Authority from the date of their adoption and the Commission shall review these Standards at least every five years from the date of their adoption or revision and advise the Council, in the light of improved knowledge or technology **and new contributions from Indigenous Peoples and local communities**, as to whether any revision is required.

[4.ter. For the avoidance of doubt, compliance with Standards is a fundamental term of the contract, for the purposes of regulation 103.]

~~[5.bis. To the extent of any inconsistency between a Standard and amendments thereto, and an already approved Plan of Work, a Contractor following a reasonable transition period, shall use its best efforts to comply with any additional changes to its Plan of Work as a result of the amendment.]~~

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

In Paragraph 1, we suggest that the term “recognized experts” be amended to “competent independent experts” to align with how the term is referred to elsewhere in the regulations. We note that ‘Annex X’ is not the correct reference, this should be amended to cross-refer to another annex (not yet drafted / added), but which should be added to the draft Regulations, to cover standardized rules for the use, need and selection process for these experts at different points in decision making. (The Annex can be referred to in each regulation that requires the ISA to involve competent independent experts, which is otherwise inserted in various parts of the regulations without any further explanation e.g. DR11 and 12). The term ‘Competent Independent Experts’ could also be defined in the Schedule, as a person identified in accordance with the Annex, and then the Annex would not need to be referenced in the Regulations every time. If Council does not feel an Annex is the appropriate place for such procedures and objectives we would recommend it be elaborated into a policy document and that can then be appropriately referenced in the Regulations / defined term.

Regarding paragraph (1)(c), there seems to be a tension between this paragraph, which calls for an ‘outcomes-based approach’, and paragraph (3), which requires a Standard to reflect all the methods, processes and technology required to implement the Standards. While an outcomes-based approach may be preferable, it is not always feasible, and such feasibility must be determined on a case-by-case basis. Noting that an outcomes-based approach be pursued ‘*where feasible*’ could resolve this tension.

We believe paragraph (2) has a drafting error, and propose a correction to make better sense of this paragraph.

In paragraph (3), we note the drafting seems inconsistent with other Regulations (e.g. use of ‘must’ instead of ‘shall’).

In para 4 we suggest including the reference to the experience of indigenous and local communities, which we suggested is moved from DR 45.

We wish to see paragraph (4 ter) reinstated. Without that paragraph, it is not clear how Standards can be made legally binding. The draft Regulations do not specify that Standards are among the ‘rules, regulations, and procedures of the Authority’, the breach of which enables compliance action under DR103. DR94(4)(ter) closes the loophole, as breach of a fundamental term of the contract is provided in the Regulations as trigger event for ISA compliance action.

We support the deletion of paragraph (5 bis), to avoid undermining paragraphs (4 alt) and (4 bis).