

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

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 of Working Group:

Protection and Preservation of the Marine Environment

2. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

3. Please indicate the relevant provision to which the textual proposal refers.

DR 60

4. 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.

- **Red font** are proposed amendments by the Facilitator in this revised text.
- Our proposed amendments and our questions or comments regarding the facilitator’s remarks are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

1. A Contractor shall develop a Closure Plan, in accordance with Regulation 7 (3) (i), Annex VIII to these regulations, ~~the Environmental Management System and consistent with other Environmental Plans of the Contractor, as well as applicable Standards, also taking into consideration Guidelines and the relevant Regional Environmental Management Plan.~~

[1.bis. The objectives of a Closure Plan are to ensure that:

(a)(a) the effective protection of the marine environment and of human health and safety are ensured during Closure or any temporary suspension of Exploitation activities.

a. The ~~M~~marine ~~E~~environment will have a clear and healthy status following the end of Exploitation ~~mining activities,~~

b The adverse Environmental ~~E~~effects arising from ~~e~~Closure activities are Mitigated ~~avoided, remedied, or mitigated,~~

c Any remaining ~~E~~environmental ~~E~~effects continue to be monitored and reported for a period prescribed in the ~~C~~losure ~~P~~plan,

d The mined site is returned to its natural state, or returned to its natural state to the extent possible, through rehabilitation and restoration,

~~(e) The closure of mining activities is a process that is incorporated into the mining life cycle,~~

~~(f) Contractors take appropriate steps to minimise harm to the environment and to human health during any period of temporary suspension.]~~

2. In developing the Closure Plan the Contractor shall, in accordance with the requirements of Annex VIII, set out the responsibilities and actions of a Contractor during any temporary suspension, and also for the Decommissioning and Closure of activities in a Mining Area, including the post-closure management and monitoring of remaining Environmental Effects. [In fulfilling these responsibilities, the Contractor shall, *inter alia*:

(a) Undertake activities and the scheduling of studies, based on available baseline data, to inform about Closure throughout Exploitation.

(a bis) Undertake a gap analysis of existing environmental data to determine if additional baseline information and/or surveys will be required, and

(a ter) Utilise Best Good Industry Practice and, Best Environmental Practices, ~~Best Available Techniques and Best Available Scientific Information.~~

b. Set a date of cessation or suspension of mining activities, at which point a management and monitoring plan must also be in place for the period prescribed in the Closure Plan and in accordance with the Standards and taking into account the relevant Guidelines and results obtained in previous monitoring activities,

(b bis) Undertake early discussions between the Authority and contractors so that regulators understand the likely timing of Closure

~~(i) mining cessation,~~

~~(ii) decommissioning,~~

~~(iii) post-closure monitoring.~~

[(c) Identify, quantify, assess and detail the management measures for the Final environmental condition of the area, including the state of remaining reserves, the oceanographic, geological, biological, socioeconomic and sociocultural condition, and the risks relating to remaining Environmental Effects are identified, quantified, assessed and managed in accordance with Best Available Scientific Information, Best Available Technologies Best Available Technologies and Best Environmental Practices, which includes the gathering of information relevant to closure or suspension,]

(d) Comply with the necessary health and safety requirements related to closure activities,

(e) Report on the identification, monitoring, and quantification of remaining Environmental Effects to the Authority, including data to inform about recovery or lack thereof, over a period established in the Closure Plan, and management responses are implemented in a timely manner, including plans for further surveys, data collection, Mitigation, or remediation where appropriate in accordance with the applicable Standard and taking into account relevant Guidelines. [The collected monitoring data shall inform the Authority about the recovery, or lack thereof, over a time period required by the Closure Plan, in accordance with the applicable Standard and taking into account relevant guidelines,]

[(f) Make and fulfil required disposal, restoration and rehabilitation commitments in accordance with the relevant Standards and taking into account the relevant Guidelines,]

(f bis) Remove completely any Installations and equipment, or parts therefrom, from the Mining Area, as well as any kind of abandoned waste. The Closure Plan should include an assessment of options leading to the identification of the contractor's preferred decommissioning solution for Installations and equipment, as well as parts therefrom, and

(g) The mining activities are closed or suspended efficiently and safely.]

2bis. The Contractor shall ~~take steps to promote~~ ensure transparency during the Closure process and consult Stakeholders in the Closure Plan design, review, and implementation.

3. ~~The Closure Plan shall cover the aspects prescribed by the Authority in annex VIII to these regulations and in accordance with the relevant Standards and taking into account the relevant guidelines.~~

4. _____

5. ~~A contractor shall maintain and update its Closure Plan~~ on the basis of the data and learning arising from implementation of the Environmental Monitoring and Management Plan and ~~in accordance with these regulations, and Good Industry Practice, Best Environmental Practices, Best Available Techniques, Best Available Scientific Information~~ and the Standards and taking account of the relevant Guidelines.

[5. The Closure Plan shall be reviewed and updated taking into account the results obtained from monitoring ~~closure~~ activities; including;

(a) ~~Each time there is a Material Change in a Plan of Work, including new knowledge, technologies, devices and new scientific findings, change of contractor or sponsoring State,~~

(b) ~~Every five years, when no Material Change has required an earlier update, and~~

(c) ~~In the [five] years preceding the planned end of the period of Exploitation, the Closure Plan shall be updated [annually] [every 2 years] [every 3 years] [in the third and fifth year] [in the year before closure] and be finalized in accordance with Regulation 60 (1).]~~

5 Alt. ~~In the five years preceding the planned end of the period of Exploitation, or any other period as deemed necessary by the Contractor and the Sponsoring State, the Closure Plan shall be reviewed annually and, if necessary, be updated and be finalized in accordance with regulation 60(1). The review and update of the Closure Plan shall take into account the results obtained from monitoring post-closure activities and each time there is a Material Change in a Plan of Work. In cases where no such Material Change has occurred and no monitoring data and information or improved knowledge or technology has signalled need for updates, every five years and at the end of the project and be finalized in accordance with regulation 60 (1). Details on the procedures of review of the Closure Plan, including conditions requiring updates thereof, shall be further elaborated in the Standards and Guidelines.~~

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

Regarding DR 59 para 1, we support the statements made by Germany and Brazil on the floor regarding reference to REMPs, noting our previous submission regarding the need for the ISA to ensure REMPs are giving legal effect.

We recommend inserting a new provision under para 1 (aa), recognizing that the Regs require implementation of the Closure Plan in the event of temporary suspension, so it's important that DR59 stipulates that a CP covers both Closure and temporary suspension.

For (1)(e), we would recommend deleting as it seems unnecessary. We agree that it is essential for Closure to begin at the outset of planning a mining project, and for those plans to be reviewed and updated continuously throughout the project. However, we consider that this is already achieved by these Regulations, which require Closure planning throughout the mining life cycle.

For (2), we wonder if this chapeau should read 'In developing the Closure Plan, the Contractor shall...' rather than relating to the Contractor's responsibilities to carry out Closure? We note

that many of the following sub-paragraphs relate to activities that need to occur before the Closure Plan is implemented.

For (2)(ater), both Best Available Techniques and Best Available Scientific Information are included in the definition for Best Environmental Practices so need not be repeated here. Best Industry Practice is not a defined term, we suspect Good Industry Practice is meant here. In addition, once the regulations text is more settled it may be sensible to include a general obligation that Contractors must apply these terms in performing all their functions - so that there isn't a need to apply a separate provision here for implementation of the Closure Plan here.

For (2)(b), we are not sure it makes sense for the Contractor to set a date of cessation 'in fulfilling its responsibilities under the Closure Plan'. The date of cessation should be set, and indeed should arrive, before the Closure Plan is implemented. These items (planned cessation date, and monitoring and management plan) seem to be contents of the Closure Plan, and so we suggest they would be better placed in Annex VIII rather than here.

For (2)(b)bis, we note that the elements list are all included in the Closure definition, so can be deleted. We also note that this (b bis) requirement again sounds like a requirement pre-Closure, not a requirement for the carrying out of Closure activities, as the chapeau suggests It is also vaguely worded. We are not sure who is meant here by 'regulators'. There may also be a desire to set a more specific requirement for the Contractor to inform the Authority in the event of any anticipated changes to the planned date of Closure, as identified in the Closure Plan. The Contractor could also be required to include notice of the planned date of Closure in each annual report, just so that there is an annual opportunity for ISA and Contractor (and stakeholders) to review whether or not this has shifted.

(2)(f): we believe this can also be deleted. The definition of 'Closure' includes restoration and rehabilitation. The Closure Plan is already required to include restoration and rehabilitation commitments, and Contractors are already required to deliver the Closure Plan in accordance with the Regulations, Standards, BEP, GIP etc. So this separate provision requiring the same thing but in different terminology seems superfluous and confusing.

We believe paragraph (3) is duplicative of paragraph 2 and can be deleted.

For paragraph 5, we like these examples of material change, but are concerned that introducing them here gives this provision a different - potentially narrower - meaning to other regulations that refer to Material Change, which we do not believe is the intention. It may be preferable to use to the agreed definition of a Material Change here, without adding those extra elements that potentially duplicate or conflict or confuse that definition (but we would like to ensure that those elements ARE captured in the definition of Material Change given in the Schedule to the Regulations.). NB a change of control or change of sponsoring State may be separate instances, not included in the Material Change definition - so those should be retained here.

With regards to the matrix, we note the suggestion in the matrix to move 1bis and the objectives of a Closure Plan to the EMMP Standard – which we find rather confusing. The objectives of a Closure Plan in our opinion should be contained within the regulations themselves – which would be necessary to clarify to all stakeholders an overview of the regime, and what the Closure Plan's basic function is. We also note the matrix's suggestion to move all subparas under para 2 to the EMMP Guideline. We can see the logic in doing so, but as others have indicated would prefer they be retained in a binding Standard, rather than a Guideline.

Lastly, we note the suggestion to move para 5 into the EMMP Guideline – which we do not understand the rationale for. At the very least, this should be detailed in a Closure Plan Standard or

Guideline and unsure why it would be recommended to move to the EMMP one. Regardless, these are mandatory triggers to revise the Closure Plan, and as such has no place in a discretionary Guideline. If it's left to the contractors' discretion, there is no reason why they would ever re-visit the CP, unless it is the moment before closure and they are again required to review it. And that leaves the ISA exposed for unexpected or mid-contract closures.