

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27<sup>TH</sup> SESSION:  
COUNCIL - PART II**

***Informal Working Group - Finance***

*Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to [council2022@isa.org.jm](mailto:council2022@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 38

**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.**

- The facilitator’s proposed amendments are reflected in **red**.
- Our proposed amendments are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

**Regulation 38  
Annual Report**

1. A Contractor shall, within 90 Days of the end of each Calendar Year, submit an annual report to the Secretary-General, in such format as may be prescribed from time to time in the relevant **Standards, and taking account of Guidelines**, covering its activities in the Contract Area and reporting on compliance with the terms of the exploitation contract.
2. Such annual reports shall include:
  - a) Details of the Exploitation work carried out during the Calendar Year, including maps, charts and graphs illustrating the work that has been done and the data and results obtained, reported against **and noting variance from** the approved Plan of Work;
  - b) The quantity and quality of the Resources recovered during the period and the volume of Minerals and metals produced, marketed and sold during the Calendar Year, reported against the Mining Workplan;
  - c) Details of the equipment **and methods** used to carry out Exploitation, and in operation at the end of the period, **noting any variance from the Plan of Work**;
  - d) An annual financial report, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, of the actual and direct Exploitation expenditures, which are the capital expenditures and operating costs of the Contractor in carrying out the programme of activities during

the Contractor's accounting year in respect of the Contract Area, together with an annual statement of the computation of payments paid or payable to the Authority, reported against the Financing Plan, and summaries of the royalty returns lodged during the reporting period;

- e) Health and safety information, including details of any accidents or Incidents or Notifiable Events involving human health and safety arising during the period a copy or summary of the annual verification report pertaining to the Contractor's safety management system obtained in accordance with regulation 30bis(2)(d), information on compliance with health, labour and safety standards, and actions taken in respect of the Contractor's health and safety procedures and safety management system, reported against the Health and Safety Plan and Maritime Security Plan, and the Emergency Response and Contingency Plan where relevant;
- f) Details of training carried out in accordance with the Training Plan:
- g) The methodology used and actual results obtained from Test Mining activities or environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against, ~~where applicable, any criteria, technical Standards and~~ environmental objectives, indicators, and thresholds pursuant to the applicable Regional Environmental Management Plan, and the Environmental Management and Monitoring Plan, and the Contractor's annual environmental compliance assurance plan for that year, together with details of any response actions implemented under the plan and the actual costs of compliance with the plan;
- (g bis.) Details of any accidents, Incidents, or Notifiable Events involving risk or harm to the marine environment arising during the period, information on compliance with environmental standards, and actions taken in respect of the Contractor's environmental procedures and environmental management system, reported against the Environmental Management and Monitoring Plan, and the Emergency Response and Contingency Plan where relevant
- (g ter.) An annual environmental compliance assurance plan, setting out environmental compliance assurance actions for the following year aimed at delivering the outcomes set out in the Environmental Monitoring and Management Plan, and containing key indicators against which the Contractor's effectiveness in environmental compliance assurance can be reviewed;
- h) A statement that all risk management systems and procedures have been followed and remain in place, together with a report on exceptions and the results of any verification and audit undertaken internally or by independent competent ~~experts~~ persons;
- (h) bis. A copy of the annual audit report and the management review report for the Environmental Management System obtained pursuant to regulation 46(2)(b) and (e);
- i) Evidence that insurance is maintained, including the amount of any deductibles and self-insurance, together with the details and amount of any claims made or amounts recovered from insurers during the period;

(i bis.) Evidence that the Environmental Performance Guarantee has been paid or maintained in accordance with the contract terms

- j) Details of any changes made in connection with subcontractors and suppliers of goods and services engaged by the Contractor during the Calendar Year, any known violations of environmental laws, rules, or regulations applicable to those subcontractors or suppliers and, in case of a violation, a justification for continuing to use that subcontractor or supplier and remedial steps taken to ensure future compliance;
- k) The results of any Exploration activities, including updated data and information on the grade and quality of Resources and reserves identified in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves;
- l. A statement that the Contractor's Financing Plan is adequate for the following period; and
- m. Details of any modification made to the Plan of Work in the reporting period, and details of any proposed modification to the Plan of Work for the following period and the reasons for such modifications.
- n. an annual sustainability report, reporting on material social, economic and environmental impacts caused by the Exploration and Exploitation activities of the Contractor, prepared in conformity with [the Authority's Sustainability Policy,] Standards, taking account of Guidelines, and independently verified by a recognised international provider of verification services.
- o. details of any material departures from Guidelines, with an explanation as to how that departure maintains compliance with the Regulations and Standards.
- p. details of any stakeholder consultations undertaken, including with coastal states, pursuant to Regulation 4.
- q. a summary of any:
  - (i) performance assessment conducted pursuant to regulation 52,
  - (ii) inspection reports issued pursuant to regulation 100
  - (iii) compliance notices issued pursuant to regulation 103,
  - (iv) suspensions of activity pursuant to regulations 21, 28, 29, 99 or 103,
  - (v) review of activities under a Plan of Work pursuant to regulation 58, during the reporting period

2bis. The Contractor shall ensure that all data and information in the annual report is provided in accordance with applicable reporting Standards and templates, taking account of any Guidelines; and reported data shall be disaggregated by gender wherever relevant.

- 3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted.
- 4. The Commission shall review annual reports received, and shall prepare and submit to the Council a summary report pertaining to Contractors' annual reports, which shall record inter alia any failures to comply with this reporting requirement, any instances or concerns regarding non-compliance with the Rules of the Authority, any trends or findings from the review, and any related recommendations for the Council's consideration.

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

\*Note – This regulation came up in the context of the OWEG on financial matters. Several of the amendments above we propose relate to non-financial matters. It was unclear if this was time to lodge those non-financial matters. If not, it would be helpful to know if these comments should be contained in a submission for those regulations that plan to be discussed during plenary (Preamble, Part III, and Part X).

Regarding **paragraph 1(e)**, As currently drafted, human health and safety appears inappropriately de-prioritised in these regulations. We propose a regulation below (DR 30bis) that mirrors the obligations of the Environmental Management system (DR 46), which we then reference here.

Regarding **paragraphs g(bis) and g(ter)**, in addition to continual environmental data reporting, and periodic environmental monitoring reports against the EMMP, Contractors should set out an environmental compliance assurance plan for each year, providing annual breakdowns of planned activities for the following year, and then provide a formal assessment of their performance against that plan for that year. These reports should be made publicly available. Source: [White Paper, Dr. Kevin Murphy \(Pew, 2020\)](#). These reports should also take into account the relevant REMP. When an EMMP performance assessment report is also required, this may be cross-referred in the annual report to avoid overlap. The proposed additional wording would also align with the health and safety wording (above) to cover environment-related compliance and incidents, and also to cross-refer to the EMS.

Regarding **paragraph j**, contractors are likely to operate via subcontractors and suppliers, and should ensure that they meet requisite quality and performance standards [see Annex X, section 6 of these Regulations], so this subparagraph should be retained as modified. Annex II (Mining Plan content) should require Contractors to provide lists of their suppliers of goods and services together with the compliance records of these suppliers; and the annual report is an opportunity to require Contractors to update this information and to justify to the ISA their reasons for using any supplier with a limited or otherwise deficient environmental compliance record and the steps (such as capacity building) they are taking to improve matters. Source: [White Paper, Dr. Kevin Murphy \(Pew, 2020\)](#)

Regarding **paragraph n**, in addition to the reporting of monitoring data and scientific interpretation of the data, the ISA should require Contractors to report annually on ‘sustainability’ (or similar) for a broad non-technical audience, as is common practice globally in many sectors. The ISA should also itself develop and implement a sustainability policy, under which this reporting requirement can flow. The ISA should provide general guidance on the report content and the key indicators to be reported (or alternatively may refer to the standards set out in other sources e.g. the Global Reporting Initiative). These reports should be made publicly available. Source: [White Paper, Dr. Kevin Murphy \(Pew, 2020\)](#)

Regarding **paragraph o**, while Guidelines are non-binding, reporting on departures has been discussed previously at the ISA, as a useful tool to help the LTC in their review of the Contractor activity and compliance, as well as to assist the ISA in keeping up-to-date with possible new and improved methodologies, and the currency of the Guidelines.

Regarding **paragraph p**, this proposed addition will assist with implementation of DR4 and Article 142 UNCLOS. See further proposals on DR 4 ( [Pew-DR4.pdf \(isa.org.jm\)](#) )

Regarding **paragraph 2bis**, Mining is renowned as one of the worst sectors globally for gender diversity. In adopting SDG5, States agreed to work to ‘achieve gender equality and empower all women and girls’ (in all sectors). Taking informed decisions, and tracking success towards that goal is difficult if gender-disaggregated data are not available. Mining sectoral guidance recommends that gender-disaggregated data collection, monitoring, and analysis should be

embedded into company and regulator policies and procedures. For Contractors, this may include gender-disaggregated data on numbers of female staff – including separate reporting on women in senior-level positions: an SDG 5 indicator, and number of women participating in consultation processes, for example. [Source: IGF Gender in Mining Governance: Opportunities for Policy-Makers 2021.](#)

Regarding **paragraph 4**, it seems sensible to include in the Regulations some wording to formalize the ISA’s review process for annual reports, following their receipt. Therefore we propose this new paragraph be added. Source: [Fifth Report of the Code Project - Part 2 \(Pew, 2019\)](#)