

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

Informal Working Group - Environment

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.

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.

- 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**.

1. A Contractor shall conduct performance assessments of the Environmental Management and Monitoring Plan. The Authority—Commission shall review the performance assessments of the Environmental Management and Monitoring Plan undertaken by ~~the Contractor~~ a competent and independent auditor hired by a Contractor in accordance with the relevant Standards and taking account of the relevant Guidelines to assess:

1. The compliance of the mining operation with the plan;
2. The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto; and
3. The conformity of the plan with the ~~relevant-applicable~~ Regional Environmental Management Plan, if any.
4. accuracy of the findings of the environmental impact assessment as set out in the Environmental Impact Statement which informed the Environmental Management and Monitoring Plan.

1(bis) In conducting a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall take into account:

- a. changes in knowledge, technology, mining patterns, monitoring techniques and detection capabilities;
- b. the outcomes of management reviews of the environmental management system conducted under regulation 46(2)(e); and
- c. information and data derived from any Exploitation by other Contractors

3. A Contractor shall hire a competent and independent auditor to compile and submit a performance assessment report to the Secretary-General in accordance with, and in the format set out in, the relevant Guidelines. The report shall describe the assessment process undertaken by the Contractor, including who conducted it and which independent experts were engaged.

3bis The Secretary-General shall publish the report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholder's comments to the Commission for review.

4. The Commission shall review a performance assessment report and any stakeholder comments received in relation to it at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. If the Commission does not possess sufficient expertise amongst its members it shall consult independent experts to review the performance assessment. The Secretary-General shall make public the report and the findings and recommendations resulting from the Commission's review.
5. Where the Commission upon review of the report and any Stakeholder comments received in relation to it, considers the performance assessment ~~undertaken by the Contractor~~ to be unsatisfactory or the report submitted to be inadequate, taking account of the applicable Standards, relevant Guidelines and the Environmental Management and Monitoring Plan, the Commission may require the Contractor to(...)
6. Where ~~a Contractor has previously submitted two successive unsatisfactory performance assessments reports and or~~ the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor in accordance with the Guidelines, the Commission may procure, at the cost of the Contractor, an independent competent person to conduct the performance assessment and to compile the report.

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

Regarding **paragraph 1**, the ISA should retain powers to require a Contractor to re-visit an EIS and its conclusions and to consider how this evaluation feeds into the EMMP, particularly in the event that monitoring shows any EIA finding to be materially flawed. We support the United States' proposed addition of **paragraph 1bis** to better delineate the requirements of the performance review. Accounting for external developments and advances in capabilities will be important to ensure the Contractor's application of Best Environmental Practices and continuous improvement.

On **paragraph 2**, we support a more frequent review - at a minimum every two years, but preferably annually.

On **paragraph 3**, we agree with interventions made by Spain, Costa Rica, Chile and others that a competent and independent auditor must be hired by the Contractor to compile and submit a performance assessment report.

In addition, we believe Stakeholder consultation on the performance assessment should be required and that stakeholder comments received should be considered by the LTC in its review. As such, we propose a new **paragraph 3bis** and new language in **paragraph 4 and 5** be inserted.

Lastly, **regarding paragraph 6**, it is not clear why it would take "two successive unsatisfactory" reports before action is taken by the Commission and recommend that qualification be deleted.