

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

Informal Working Group - Environment

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete.

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

Pew Charitable Trusts

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

DR 48

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.

**Regulation 48
Environmental Management and Monitoring Plan**

3. The Environmental Management and Monitoring Plan shall cover the ~~main~~ *main* aspects content prescribed by the Authority in annex VII to these regulations and shall be:

(b) In accordance with the *the Authority's policies and objectives cited in regulation 2, as well as* relevant regional environmental management plan; and

(d) *Designed to ensure that the Contractor, in the performance of its Plan of Work:*

- (i) does not breach any of the Rules of the Authority,*
- (ii) tests assumptions made in the Environmental Impact Statement, continuously improves environmental knowledge and reduces residual uncertainties remaining from the environmental impact assessment process,*
- (iii) identifies any material differences in scale, nature or extent of Environmental Effects caused, compared to those predicted in the environmental impact assessment, and*
- (iv) manages any responses or changes required to project implementation as a result of new knowledge*

3bis. *A Contractor shall reflect in its Environmental Monitoring and Management Plan:*

- (a) Its internal thresholds and methodology for maintaining compliance with the Standards of the Authority developed in accordance with Regulations 45 and 94, and any thresholds set by the relevant Regional Environmental Management Plan;*
- (b) Any conditions included in the Council’s environmental impact assessment decision and*
- (c) Commitments and procedures on how the Mitigation measures will be implemented, how*

the effectiveness of such measures will be monitored, what the management responses will be to the monitoring results and what reporting systems will be adopted and followed.

3ter. A Contractor shall include in its Environmental Monitoring and Management Plan project-specific environmental objectives, which are compatible with and designed to achieve, the environmental policy of the Authority, and the environmental objectives, indicators and thresholds of the relevant Standards and Regional Environmental Management Plan.

5. The Contractor shall allocate sufficient resources and assign roles and responsibilities to implementation of the Environmental Monitoring and Management Plan in proportion to the relevant risks and impacts

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

In para. 3, along with Costa Rica, France and other delegations we also propose striking “main aspects”. This proposal would help avoid any confusion over what elements in the EMMP template must be covered. We also support Germany’s comments regarding the essential importance for specific environmental thresholds to be set first by the ISA, which the EMMP’s project-specific objectives must then meet.

The descriptive provisions in para 1 can be formulated as operative provisions in subparagraph (3).

Rationale for subpara 3(d)

For reasons of practicality, legality, and commercial fairness, contracts should not be continually revised. Instead, a Contractor can be required via the EMMP to strive for continual self-assessment and adjustment, in pursuit of ever-minimising the adverse environmental footprint of the project. Science-based adaptive management is therefore a key mechanism for the EMMP. This involves reducing uncertainties that remain from the EIA process over time, and responding flexibly to new learning and changing circumstances through continual monitoring and re-adjustment. Incorporating such a routine evaluation-improvement cycle is especially important given the long term (30-year plus extensions) envisaged for exploitation contracts.

Adaptive management is not, however, a mechanism that should be used as a justification to approve otherwise environmentally risky activities. Contractors should be required to take a precautionary approach and be able to evidence sufficiently to the ISA’s satisfaction that environmental standards can be met. *Then* adaptive management can be employed by the ISA and Contractors as an enhancement to precaution. Sources: Code Project submission to the LTC Working Group on draft EMMP Guidelines, December 2020 [not published]; and Neil Craik ‘Implementing adaptive management in deep seabed mining: Legal and institutional challenges’, Marine Policy 114, 2020.

Rationale for subpara 3bis

In other sectors, a project proponent will design its environmental plan, including an EMMP, around pre-defined standards set by regulators and industry standard-setting bodies (pertaining to environmental performance thresholds e.g. noise control, emissions etc.) The ISA needs to develop its environmental Standards to set such thresholds (in accordance with DR45) as a priority. Then the EMMP requirements on the Regulations can cross-refer to the Standards and Guidelines setting environmental thresholds and

- if planned – also those relating to technology and design, and/or indicative examples or definitions of “best available technology”. These will be needed to inform Contractors’ machinery design; and the ISA may wish to work with the IMO in relation to emissions standards ([ISA Technical Study 25](#) pg.39).

For specific parameters that Contractors must monitor under the environmental standards to be set by the ISA, the ISA should require Contractors to set internal action thresholds to enable action before a threshold is breached, for example:

- at 75% of a limit, take Action ‘A’;
- at 90% of a limit, take Action ‘B’
- at 100% or more of a limit, report non-compliance. Source: [White Paper, Dr. Kevin Murphy \(Pew, 2020\)](#)

Rationale for 3ter

‘Environmental objectives’ are referenced a few times in the draft Regulations [DR 2(e)(i), DR46(2)(a), DR48(1), and Annex VII paragraph 2(a)]. The meaning of that term is not elaborated, but from the nature of those references, they appear to envisage every Contractor developing its own environmental objectives for each Plan of Work.

Elaboration of when and how these objectives are set would be helpful. In particular, several respondents to the 2020 stakeholder consultation on Standards and Guidelines for Environmental Management Systems (e.g. EU, Germany, Italy, Portugal, US, IASS, Pew, JOGMEC, whose comments are available: [here](#)) were concerned to ensure that Contractors should not have free rein to set their own environmental objectives. A Contractor-led, project-specific approach to environmental objectives could lead to different environmental performance benchmarks for different Contractors. It is also possible that environmental objectives determined by a Contractor will miss elements critical to protection of the marine environment. ISA leadership is needed and these proposed amendments (as per DR48(3ter)) are predicated on the presumption that the ISA will set its own strategic environmental objectives, and evaluate Plans of Work against them. Annex III may be another location where this issue could be addressed.

Source: [White Paper, Dr. Kevin Murphy \(Pew, 2020\)](#)

Rationale for OP5

The proposed insertion avoids any inadvertent suggestion that the expenses associated with the implementation of other Regulations might not be borne by the Contractor. It should be broadened to cover personnel resources as well as financial.