

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

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: Plenary - President's Text

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.

Regulation 20

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.

Term and renewal of exploitation contracts

~~1. Subject to the provisions of section 8.3 of the exploitation contract, T~~the maximum initial term of an exploitation contract is 30 years. The Authority and the Contractor may agree to a shorter period in light ~~[and 50 years for contractors which are developing States,]~~ ~~[the parties may agree to a minimum initial term of 15 years],~~ taking account of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan and the policies and objectives of the Authority cited in regulation 2 ~~and including a reasonable time period for the construction of commercial-scale mining and processing systems.~~

3. The Contractor submitting an application to renew an exploitation contract shall supply ~~[a revised plan of work, as well as]~~ such documentation as may be specified in the ~~[Standard and]~~ taking account of Guidelines. Submission of a revised Plan of Work for the purposes of this regulation is deemed to be a Material Change for the purposes of regulation 57. ~~If the Contractor wishes to make any changes to a Plan of Work [and such changes are Material Changes], the Contractor shall submit a revised Plan of Work [including an updated EIA].~~

2. The Commission shall consider such application to renew an exploitation contract at its next meeting ~~after submission of any revised plans or responses by the Contractor pursuant to regulation 11(2),~~ provided the documentation required under paragraph 3 has been circulated at least 30 Days prior to the commencement of that meeting of the Commission.

3. In making its recommendations to the Council under paragraph 6 below, ~~including any proposed amendments to the Plan of Work or revised Plan of Work,~~ the

Commission shall examine and assess applications in accordance with Regulation 13, against the criteria contained in Regulation 12, and take account of any report on the review of the Contractor's activities and performance under a Plan of Work under regulation 58 [as well as any other relevant information from, inter alia, performance assessments, annual reports, environmental reports, legal actions against the contractor].

4. The Commission may ~~shall~~ recommend to the Council the approval of an application to renew an exploitation contract, and ~~[an exploitation contract shall be renewed by the Council]~~ ~~[an exploitation contract may be renewed by the Council]~~ [and the Council may approve the renewal application], provided that:

(a) ~~The Resource category is recoverable annually in [Commercial and Profitable Quantities from the Contract Area];~~ economic life of the mining project, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability.

(b) The Contractor is in compliance with the terms of its exploitation contract and the Rules of the Authority, including ~~the rules, regulations and procedures~~ [and Standards] and Assembly or Council decisions adopted by the Authority from time to time ~~to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;~~

(b) bis. [The cumulative environmental impact does not exceed the thresholds set by the applicable Regional Environmental Management Plan as a result of the renewal, and that such renewal does not hinder the achievement of the strategic and regional environmental goals and objectives;]

(c) The exploitation contract has not been terminated earlier; and

(d) The Contractor has paid the applicable fee in the amount specified in appendix II.

(e) [The Council Commission has reassessed the Contractor consistent with the requirements of regulation 13(1), 13(2) and 13(3) and is satisfied that the requirements of regulation 13 will be met Contractor has the ability to continue exploitation; and]

(f) [The Sponsoring State has reconfirmed their sponsorship of the Contractor by reissuing their certificate of sponsorship.]

7. Each renewal period shall be a maximum of 10 years [for a maximum overall duration of the exploitation contract of 60 years]. [A maximum of two renewals may be requested]

8. Any renewal of an exploitation contract shall be effected by the execution of an instrument in writing by the Secretary-General or duly authorized representative, and the designated representative or the authority designated by the Contractor. The terms of a renewed exploitation contract shall be those set out in the standard exploitation contract annexed to these regulations that is in effect on the date that the Council approves the renewal application.

9. ~~Sponsorship is deemed to continue throughout the renewal period unless the Sponsoring State or States terminates its sponsorship in accordance with regulation 21.~~

10. An exploitation contract in respect of which an application for renewal has been made ~~[shall]~~ [may, for a maximum of [three] months after its expiry date and only under extraordinary circumstances], despite its expiry date, remain in force until such time as the renewal application has been considered and its renewal has been granted or refused.

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

Para 1: The Regulations should provide rules for maximum contract terms and renewals. There should not be discretion allowed for exceptions to the rule to be agreed from contract to contract..

The proposed 50 years term is not advised, taking into account the UNCLOS' stipulation that 'The total duration of exploitation should be short enough to give the Authority an opportunity to amend the terms and conditions of the plan of work at the time it considers renewal'. The proposed edits here heed the request from several delegations that indicates or even encourages the possibility of a shorter term. The right to agree shorter terms should be reserved not only for reasons of mine life predictions, but also for other policy reasons (e.g. to support the ISA's ability to improve regulatory standards as scientific knowledge improves over time).

For more on this subject, please see: Fifth Report of the Code Project - Part 2 (Pew, 2019). Also Mark Squillace. 2021. Best regulatory practice for deep seabed mining: "The ISA should set shorter terms for contracts. The Contractor can be granted a right of renewal but it must be contingent upon a thorough review to ensure full compliance with the terms of its contract and relevant ISA rules. Renewal also affords the public an opportunity for meaningful engagement and may facilitate adaptive management, and an evolving regulatory regime."

Para 3: The LTC, in its cover note to the draft Regulations in 2019 [ISBA/25/C/18], stated that it: "took note of stakeholder comments of the need for a greater level of scrutiny at the time of a renewal application, including the submission of a revised plan of work." But this note is not well-reflected in the amended DR20, which gives the Contractor the power to decide whether or not to submit a new Plan of Work. This is likely to make the decision a commercial (rather than regulatory) one. While a streamlined contract renewal process can be desirable, an appropriate level of regulatory control should be retained.

To access information adequate for the extension of an exploitation contract, the ISA should first require submission and review of a new or materially amended Plan of Work to cover that:

- a. the previous Plan of Work would have been time-bound within the initial contract period, and therefore would need alteration to be extended;
- b. there are likely to be new and unanticipated developments to consider in renewal decisions that take place some 30 years after the original application;
- c. DR20 does not limit the number of contract renewals and sets a presumption in favour of renewal (see DR20(6), which contains only limited circumstances in which a renewal will not be granted). As currently drafted, the Regulations could allow infinite contract extensions without any new Plan of Work, nor any consultation with Stakeholders;
- d. if a renewal is granted the Plan of Work will be the document that sets out the activities the Contractor is legally bound to perform.

Para 4: The criteria for assessing an application for extension of a contract contained in DR20(6) are narrowly focused on Contractor behaviour. As currently drafted, absent a breach, a Contractor could obtain 10-year contract renewals, indefinitely, almost by default. This presumption impedes the Council's oversight of regional or strategic issues, for example consideration of cumulative or unforeseen impacts, despite the infancy of the industry and the ISA's limited practice as regulator. The extension of contracts should be discretionary, which necessitates the use of the wrd 'may' in this DR20(6).

Para 4 (a) This wording is suggested in order to align with UNCLOS (Annex III, section 17), and because the different meanings behind 'commercial' and 'profitable' were unclear, and may be inappropriate (e.g. would it exclude a State-owned Contractor who retains the ore, so it is neither sold 'commercially' or at a profit?)

Para 4 (b) The definition of the 'Rules of the Authority' already includes 'rules, regulations and procedures of the Authority' so this text can be deleted. But it does not include Standards or decisions of the decision-making organs of the ISA, so this text should be added. There is no reason to circumscribe this requirement for compliance by reference specifically to rules relating to environmental protection.

We support inclusion of this DR20(6)(b) bis.

We support inclusion of this DR20(6)(e) and (f) as an important provision to prevent renewal of a contract where the circumstances of the applicant or application no longer meet the essential criteria for the initial contract award. We suggest this drafting amendment to simplify and to ensure the decision-making duty is appropriately placed upon the Council.

Para 9: This can be deleted in view of proposed DR20(6)(f). It does not seem unduly onerous to require the sponsoring State to confirm they are happy to continue with sponsorship.

Para 10: The proposed amendment would assist avoid a situation where a contract continues to run by default in the absence of a decision by the ISA. This seems positive in terms of the ISA maintaining an appropriate degree of control over activities in the Area.