

**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:

Institutional Matters

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 85

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.

1. A Contractor shall pay to the Authority, from the effective date of an exploitation contract and for the term of the exploitation contract and any renewal thereof, an annual fixed fee from the date of commencement of Commercial Production in a Contract Area. The amount of the fee shall be established by decision of the Council as required under paragraph (1) (d) of section 8 of the annex to the Agreement. on the advice of the Finance Committee, and with the aim to cover the likely costs associated with the ISA’s management of the contract, including staffing the Secretariat and conducting inspection and enforcement activities.

2. The annual fixed fee is due and payable to the Authority within 30 Days of the commencement of each Calendar Year at the rate prescribed by the Council under paragraph 2 above. Where an annual fixed fee remains unpaid after the date it becomes due and payable,

- a. this constitutes a violation of the fundamental terms of the contract for the purposes of regulation 103 and
- b. a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.

4. In any Calendar Year, the annual fixed fee may be credited against any royalty or other amount payable under Part VII of these regulations.

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

For para 1, it is important that the ISA is properly capacitated to fulfil its mandated regulatory functions, and also that the costs of that capacitation are appropriately allocated to the parties who stand most to benefit from it. See Mark Squillace, 2021: Best regulatory practice for deep seabed mining “The ISA must consider an annual fee sufficient to cover the likely costs associated with reviewing applications and carrying out inspection and enforcement activities during the period of commercial production, which may be significant.” Presuming this is indeed the purpose of this annual fixed fee, then it would more sensibly start from contract commencement date (not from the date of Commercial Production, which may be achieved some years after the contract has started). If this amendment is made, then the annual reporting fee in DR84 could be deleted, and rolled up into this annual fixed fee instead.

For para 2, adding this sub-paragraph (a) would indicate that there are repercussions in the event of failure to make annual fee payments.

For para 4, this provision would mean that for each dollar of revenue collected from the annual fixed fee, the royalty payment will be reduced by a dollar, so royalties paid would not increase the ISA’s overall revenue collections. That is effectively funding the ISA’s regulatory costs out of a pot that would otherwise be distributed for the benefit of humankind, and particularly developing countries. If the purpose of this fee is to cover ISA costs, it would be more sensible not to credit it against the royalty.