

**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:

President

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 94

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. The Commission shall, taking into account the views of ~~[recognized experts,]~~ [recognized experts identified in accordance with annex XI] ~~relevant~~ Stakeholders and relevant existing internationally accepted standards, make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to [inter alia]:
 - (a) ~~Operational~~ the effective protection of human health and safety, and labour matters;
 - (b) The conservation [and Exploitation] of the Resources; and
 - (c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, as referred to in regulation 45.

1 ter. Standards shall describe how the Authority and Contractors shall implement these regulations, and shall aim for:

- (a) a uniform and non-discriminatory operating environment for all Contractors;
- (b) a consistent approach by all parties to reduce environmental impacts and human health and safety risks to as low as reasonably practicable;
- (c) an outcomes-based approach to regulation, which prescribes rigorous environmental outcomes while affording flexibility for the processes by which these outcomes are achieved to enable continuous improvement, particularly as technology advances.

2. The Council shall consider and approve, upon the recommendation of the Commission [and taking into account statements submitted by Stakeholders during a public consultation,] [and giving due consideration to submission by stakeholders in the framework of the Public Consultations] the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority [and] [including] [the decisions of the Council and the Assembly and developed on the basis of Best Available Scientific Evidence]. If the Council does not approve such Standards, the Council shall return the Standards to the

Commission for reconsideration in the light of the views expressed by the Council. The Standards approved by the Council shall remain effective on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly.

3. The Standards contemplated in paragraph 1 above ~~[may]~~ **[must]** include both qualitative and quantitative standards, ~~[and must include all]~~ ~~[as well as]~~ the methods, ~~[process or]~~ **[processes and]** technology required to implement the Standards.

~~3. bis. Standards shall be methodological, procedural, technical and environmental rules that are necessary to implement the regulations and to ensure a coherent approach to monitoring and assessment, as referred to in Regulation 45. Standards are legally binding on Contractors and the Authority, and shall be revised every 5 years in the light of new knowledge, e.g. resulting from environmental impact assessments and monitoring.~~

4. Standards or amendments thereto adopted by the Council ~~[and the Assembly]~~ **[and approved by the Assembly]** shall be legally binding on Contractors, ~~member States~~ **[Sponsoring States]** and the Authority from the date of their adoption and the Commission ~~[may]~~ **[shall]** ~~[should]~~ **be [revised]** ~~[reviewed]~~ ~~[eventually amended]~~ **review all Standards** at least every five years from the date of their adoption or revision, **[and advise the Council]** and in the light of improved knowledge or technology **[and on the request of the Council]** **[or in view of unforeseeable events or environmental considerations]**.

4bis. Standards adopted or revised may incorporate an appropriate transition period for implementation by existing Contractors.

4ter. For the avoidance of doubt, compliance with Standards is a fundamental term of the contract, for the purposes of regulation 103.

5. In the event of any conflict between the provisions of these regulations and the provisions of a Standard, the regulations shall prevail. The Authority should be notified of the conflict, and shall provide additional guidance as necessary.

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

We support the reference in paragraph (1) to an Annex, which can set out transparent procedures and objective criteria for identifying and recruiting external experts where required to support the ISA's work. This Annex (or Standard if preferred) can be referred to in each regulation that requires the ISA to involve competent independent experts. NB we note that there is already an Annex X ('Standard Clauses for Exploitation Contract') so we believe the reference here should be to a new Annex XI. We agree with the United Kingdom and Jamaica's intervention for the deletion of the word 'relevant' before 'Stakeholders' so as to align with the defined term 'Stakeholders' used in the Schedule to the Regulations. With regards to paragraph (a), we note that the terminology 'human health and safety' is used elsewhere in the Regulations, rather than 'operational safety, which' is not. So we suggest an amendment here for consistency.

We propose a new paragraph 1 ter. which sets out the general purpose of the Standards, to help ensure all parties share mutual understanding. The need to articulate guiding objectives for Standards has been raised in various ISA discussions, including the 2019 workshop held in Pretoria focused on Standards and Guidelines. These points could alternatively be included in

a standalone Regulation setting out the ISA's regulatory strategy, or DR2's list of ISA fundamental principles and policies.

A new final sentence to paragraph (2) (taken from wording proposed in 94 alt) would clarify the application of Standards once initially adopted

As suggested by the United Kingdom, we recommend deletion of 3bis - it is repetitive of paragraphs 1, 3 and 4.

We suggest some tweaks to the drafting of paragraph (4) to emphasise that amendments to Standards bind all Contractors (not just new entrants), to identify that the Council 'adopts' and the Assembly 'approves' Standards, and to clarify that Standards apply to all member States (not only sponsoring States). As mentioned by other delegations, we propose a new paragraph (4 bis) to enable a transition period to be granted to Contractors where new or revised Standards may be adopted that require new implementation action from them to bring themselves into compliance. We also believe it would be helpful that the Regulations clarify that Standards will be legally binding. We note however no further explanation as to the meaning of 'legally binding' in this context. For this reason we propose an additional new paragraph (4 ter) to clarify that there would be repercussions or sanctions available where a Contractor is found to be in non-compliance with Standards.

Finally, we propose a new paragraph (5) which would reflect standard legislative practice to help identify and manage any conflicts that may arise in interpretation of primary and subsidiary regulatory instruments.