

**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.

Schedule: Use of terms and scope

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.

“Closure” means activities undertaken at a particular site once commercial production has ceased, and includes: Decommissioning, post-mining monitoring and reporting, and any rehabilitation and restoration or compensatory measures that may be agreed.

“Decommissioning” means measures taken, whether onshore or offshore, to permanently cease the operations, remove, or dispose of structures, facilities, Installations, and other equipment erected or used for the purposes of activities undertaken pursuant to an exploitation contract, in connection with the abandonment or cessation or partial cessation of those activities in a Contract area or part of a Contract area.

***["Ecosystem Approach" means]** a comprehensive, integrated approach to the management of human activities based on the Best Available Scientific Evidence that accounts for marine ecosystems and their dynamics, in order to achieve ecosystems' conservation and sustainable use of, and the avoidance of interference with, the ecological balance of the marine environment.*

***["Effective Control" means]** or “effectively controlled” requires a substantial and genuine link between sponsoring State and Contractor, which includes for non-State actors the location of the company’s management and beneficial ownership, as well as the ability of the sponsoring State to ensure the availability of resources of the Contractor for fulfilment of its contract with the Authority and any liability arising therefrom, through the location of such resources in the territory of the sponsoring State or otherwise.*

“Good Industry Practice”** **["Best Industry Practice"]** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide, and includes meeting the performance requirements under any Rules of the Authority, and relevant Standards. **based on Best Environmental Practice, which is based on Best Available Scientific Information and Best Available Technology**. **Employment of the latest widely accepted stage of development (state of the art) of processes, of facilities or of methods of operation,

consistent with the Fundamental Principles, including using skill, diligence, prudence and foresight which is an would reasonably be expected to be applied by a skilled and experienced person engaged in the marine mining industry]

“**Marine Environment**” includes the physical, chemical, [oceanographic](#), geological, [genetic](#) and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), the waters of the seas and oceans and the airspace above those waters, [\[species, biodiversity, ecosystems.\]](#) as well as the seabed and ocean floor and subsoil thereof.

“**Rules of the Authority**” means ~~[the Convention, the Agreement,]~~ these regulations and other rules, regulations and procedures of the Authority [\[including Standards\]\[and Guidelines\]](#) decisions of the Council or Assembly of the Authority, and any other ISA instruments expressed as being binding upon Contractors as may be adopted from time to time.

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

Closure - The draft Regulations repeatedly use the term “closure” without defining it. It is also often used in the phrase “decommissioning and closure” implying that these are two distinct terms with different meanings. These terms should be defined for the avoidance of doubt.

Decommissioning - The draft Regulations repeatedly use the term ‘decommissioning’ without defining it. It is also often used in the phrase ‘decommissioning and closure’ implying that these are two distinct terms with different meanings. These terms should be defined for the avoidance of doubt.

Ecosystem Approach -

It is a sensible proposal from the United Kingdom to include a definition of ‘Ecosystem Approach.’ A previous version of the draft Regulations contained the following wording, which has since been removed (for reason unknown): “The ecosystem approach will be based on Best Available Scientific Evidence about the marine ecosystem and its dynamic in order to identify, manage and take necessary measures to prevent, reduce, and control the risk of interference with the ecological balance of the Marine Environment, taking account of appropriate spatial and temporal scales and Indirect and Cumulative Effects.

Suggested here is a definition based on that former wording (noting that “interference with the ecological balance of the marine environment” is the language used in Article 145 UNCLOS), and also drawing upon other existing treaty sources, for example – Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, which uses: “an integrated approach under which decisions ... are considered in the context of the functioning of the wider marine ecosystems.” 2003 OSPAR and HELCOM Joint Ministerial Meeting, which uses: “the comprehensive integrated management of human activities based on the best available scientific

knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of marine ecosystems, thereby achieving sustainable use of ecosystem goods and services and maintenance of ecosystem integrity.”

Effective Control - “Effective control” of a Contractor is required by UNCLOS from the sponsoring state [UNCLOS Articles 139 and 153(2)]. UNCLOS does not expressly define “effective control”, but does indicate that “nationality” and “effective control” are separate concepts, not to be conflated. Many ISA Contractors currently are either States Parties themselves (not requiring sponsorship) or State-owned enterprises, where questions of effective control do not arise. But there have in recent years been an increasing number of contract applicants who are private sector companies, sponsored by States in which they are incorporated. Indeed, ISA practice in granting Exploration contracts to non-state actors has focused (for the purposes of effective control and identifying the correct State of sponsorship) only on the location of the registration of the Contractor company. A more logical interpretation of the “effective control” criterion might look also at ownership and business management as factors relevant to determine the level of de facto control by the State or its nationals. For example, a de facto approach was taken in the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA), which requires “a substantial and genuine link” between sponsoring State and operator, which includes for non-State actors an examination of the location of the company’s management; and then defines “effective control” as “the ability of the Sponsoring State to ensure the availability of substantial resources of the Operator for purposes connected with the implementation of this Convention, through the location of such resources in the territory of the Sponsoring State or otherwise.” The ISA should adopt a similar approach. Indeed, having a Contractor that is owned and managed by non-state nationals, and/or which has little meaningful presence or resources within the sponsoring State, would not seem to be an optimal arrangement for any sponsoring State, as it would likely reduce the benefits flowing to that State, and also to reduce the Government’s ability to take regulatory action and enforce compliance measures. But does not reduce the State’s legal liability or risk as a sponsoring State.