

**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:

Protection and Preservation of the Marine Environment

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.

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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.

- **Red font** are proposed amendments by the Facilitator in this revised text.
- Our proposed amendments and our questions or comments regarding the facilitator’s remarks are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

1. A Contractor shall conduct performance assessments of the ~~ir~~ Environmental Management and Monitoring Plan **in accordance with this Regulation**. The Commission shall review the performance assessments of the Environmental Management and Monitoring Plan undertaken by a competent and independent auditor hired by a Contractor in accordance with the relevant Standards and taking account of the relevant Guidelines. ~~[In conducting such a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall **ensure assess:**~~
 - a. The compliance of the mining operation with the ~~mitigation and management measures included in the Environmental Management and Monitoring Plan, as a part of the approved p~~**mitigation and management measures included in the Environmental Management and Monitoring Plan, as a part of the approved p**Plan of Work;
 - b. The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto;
 - c. ~~The conformity of That~~**The conformity of the plan with the plan measures included in the Environmental Management and Monitoring Plan and take into consideration** ~~with~~ the applicable Regional Environmental Management Plan **including any revisions or updates to the Regional Environmental Management Plan that may be adopted from time to time, if any**
 - d. The accuracy of the findings of the ~~E~~Environmental ~~I~~Impact ~~A~~Assessment as set out in the Environmental Impact Statement.
 - e. ~~The~~**Any relevant** changes in knowledge, technology, mining patterns, monitoring techniques and detection capabilities **that were not taken into account in developing or previously updating the EMMP which are relevant** are reflected;

- f. The ability of the Environmental Management System effectively to implement the EMMP, including the outcomes of management reviews and audits of the environmental management system ~~are~~ conducted under regulation 46(2)(e); and
- g. The efficacy, timeliness, relevance and accuracy of flow of information and data derived from monitoring the Exploitation and its impacts on the Marine Environment ~~by other Contractors is provided.~~

[(g)bis The implementation report of the Environmental Management and Monitoring Plan, as well as the comments and evaluation from the Commission in accordance with Regulation 48 above.]

[(g)ter Any finding of the Inspectors, especially those findings that indicate the non-compliance of the Contractors towards the submitted and approved Environmental Monitoring and Management Plan, as well as the recommendations on measures to be taken as shown in the inspection result.]

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan and shall occur at least every twenty-four months

2bis. An additional ad hoc performance assessment under this regulation may also be requested by the [Council] [Compliance body] following:

- a. An Incident or Notifiable Event ~~or Notifiable~~;
- b. Receipt of an unsatisfactory annual report;
- c. Issuance of a compliance notice or
- d. When deemed necessary by the Council in response to third-party ~~or whistle-blower~~ information submitted to the Council.

3. A Contractor shall hire a competent and independent auditor to carry out the performance assessment required for the purpose of this regulation, and shall submit the findings in a report to the Secretary-General in accordance with, and in the format set out in, the applicable Standard, taking into account the relevant Guidelines.

4. The Secretary-General shall publish each the Performance Assessment Report submitted in accordance with paragraph (3), and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholder's comments to the Commission [and Compliance Committee / Inspector- General]. The Commission shall in consultation with the [Compliance Committee / Inspector-General] review ~~a the~~ performance assessment report and any stakeholder comments received to it at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. ~~If the Commission does not possess sufficient expertise amongst its members, it shall consult independent experts to review the performance assessment.~~ The Commission should, where necessary and appropriate, consult external competent independent experts to review the performance assessment. ~~The Secretary-General shall publish the report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholders' comments to the Commission for review.~~

5. Where the Commission upon review of the report and any Stakeholder comments received in relation to it, and upon the advice of the [Compliance Committee / Inspector-General] considers the performance assessment to be unsatisfactory or the report submitted to be inadequate, ~~in relation~~ to the applicable Standards, taking into account the relevant Guidelines ~~and the Environmental Management and Monitoring Plan~~, the Commission may require, after providing the Contractor with a reasonable opportunity to address any inadequacies, the Contractor to:

- a. Submit any relevant supporting documentation or information requested by the Commission including a revised report; or
 - b. Appoint, at the cost of the Contractor, an independent competent person to conduct the whole or part of the performance assessment and to compile a report for submission to the Secretary-General and review by the Commission.
6. Where the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor consistent with the ~~applicable Standards Guidelines, the Commission may procure, the Commission may~~, at the cost of the Contractor, ~~[procure] an independent competent independent experts person~~ to conduct the performance assessment and to compile the report.
7. Where, as a result of paragraphs 5 and 6 above, a revised assessment and report is produced, paragraph 4 above shall apply to the revised assessment.
8. Where, as the result of a review by the Commission under paragraph 4 above, the Commission concludes that a Contractor has failed to comply with the terms and conditions of its Environmental Management and Monitoring Plan or that the plan is determined to be inadequate in any material respect, the Commission shall:
- a. Recommend to the Council to issue a compliance notice under regulation 103 or;
 - b. Require the Contractor to deliver a revised Environmental Management and Monitoring Plan, taking into account the findings and recommendations of the Commission. A revised plan shall be ~~treated the same as a modification of a Plan of Work pursuant to regulation 57 mutatis mutandis subject to the process under regulation 11.~~
9. The Commission shall report annually to the Council on ~~such~~ performance assessments ~~conducted pursuant to this regulation~~, and any action taken pursuant to paragraphs 5 to 8 ~~by it or the Secretary-General~~. Such report shall include any relevant recommendations for the Council's consideration; ~~and. Such report~~ shall be published on the Authority's website.
10. The Secretary-General shall inform the ~~S~~sponsoring State or States of any action taken pursuant to this regulation.

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

We note the facilitator's comment to move 1(a-gter) paragraphs to the EMMP Guideline. We would be comfortable moving these elements to an EMMP Standard, not a Guideline, which we believe is more consistent with the binding nature ('shall') of these provisions. As others noted, it is important that this text remains binding, as it constitutes the ISA's requirements for the Contractor's performance assessment. If the text were moved to Guidelines then the Contractors would be given discretion to decide for themselves how to measure their own performance, which would not be appropriate stringency from the ISA in its rule-making.

On para (1)(a), we believe this is a matter for regular /continula compliance monitoring of the activities against the PoW not for periodic assessments so believe it should be moved to Dr 48ter or 51.

On para (1)(g)bis, we would welcome further clarity on this proposal as it is not clear what report or evaluation is being referred to here. Also this sounds like information to be taken into account in conducting the assessment, rather than a factor that should itself be assessed, which is the subject of this list. We would make the same point about (g ter.).

It seems there should be two separate lists: (1) what aspects or functions of the EMMP are being assessed, and (2) any specific evidence or data that the ISA mandates should be taken into account in making that assessment.

In para 4 and 6, we suggest qualifying that experts should be “ competent independent experts” and in para 8b) We consider that a revised EMMP should be treated as a modification of a Plan of Work and that the process described under regulation 57 should apply to determine if such revision would constitute a Material Change.

The other proposed amendments are aimed to ensure this regulation’s focus is whether a Contractor’s EMMP remains fit-for-purpose over time, and not the Contractor’s adherence to the EMMP, which should be covered by other regulations and the ISA’s oversight and compliance regime. These are two different issues and should not be conflated.