

**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:

Open Ended Working Group on Financial Terms of a Contract

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**.

2. “Confidential Information” means:

(a) ~~[Data and information that have been designated as Confidential Information by a Contractor in consultation with the Secretary-General under the Exploration Regulations and which remains Confidential Information in accordance with the Exploration Regulations;]~~

3. “Confidential Information” does not mean or include data and information that:

(...)

~~[(f)alt. Relate to the protection and preservation of the Marine Environment, provided that the Secretary-General may designate such information as Confidential Information for a reasonable period, subject to such conditions as may be appropriate, where the Commission agrees that there are bona fide academic reasons for delaying its release on the terms proposed by the Secretary-General and the decision including the reasons are reported to Council;]~~

[(f) ALT.2. Are environmental data, including all baseline and monitoring information.]

(...)

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary - General the Information or any part of it as Confidential Information [describing, in general and non-prejudicial terms, any information redacted or required to be withheld from publication on the basis of confidentiality with an explanation of the reasons. The Secretariat shall publish a copy of any such notice received upon receipt]. If the Secretary-General [,a member state, or another Stakeholder] objects to such designation [within a period of 30 Days], the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation [,and consult the Data Committee as appropriate]. During the consultations, the Secretary-General shall take into account any relevant [Standard or] policy

guidance from the Council. [The Secretary-General shall report to the Council regarding the types and quantities of data that are designated confidential in accordance with this paragraph.] Any dispute arising as to the nature of the data and information shall be dealt with [through the administrative procedure described in [insert here cross-reference to relevant provisions or Annex of the Regulations setting out administrative decision review procedures] [in accordance with Part XII of these regulations].

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

We support deleting paragraph (2)(a). Applying two separate data classification regimes for Exploration and Exploitation simultaneously may lead to inconsistencies and confusion. It is unclear why information relating to an exploration contract would not be disclosable after that contract has expired, and the relevant Contractor has commenced an exploitation contract. If there is any data from Exploration that the Contractor considers should remain confidential, this can be managed under sub-paragraphs (b)-(d).

We prefer f alt 2. With regards sub-paragraph (f) and (f alt), we are concerned that the drafting is inappropriately narrow. In our view, the ISA's rules should designate all 'environmental data' as non-confidential as a default and should set reporting requirements that delineate properly between environmental information and commercially sensitive operational information. What comprises environmental data should be clearly defined to include, for example, all baseline information collected, all monitoring data produced in the course of implementing EMMPs, all environmental Incident reports and lessons learned from investigating the Incident and the results of environmental inspections and audits. Where exceptions to rules are deemed to be necessary, the ISA should establish clear criteria in advance, as opposed to decisions being made on a case-by-case basis by the Secretary-General.

With regards to paragraph 5, we note that between this paragraph and paragraph (2)(d) and (5) a Contractor (in consultation with the Secretary-General) could declare large swathes of information as confidential. The proposed amendments provide much needed counter balance to this and so we support them. While we support the intent behind including a specialized body to assess the designation of confidential information, we wonder if clarity could be provided on who/what constitutes the Data Committee. Similarly, we strongly support the intent behind any administrative decision review procedures – and would request clarity or more information on what such an Annex could entail.