

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH
SESSION: COUNCIL - PART III**

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 11

Red text is in original draft; magenta text indicates Pew's textual proposals

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) ~~Taking into account the confidentiality of the data,~~ place [alt 1. the Environmental Plans and any information necessary for their assessment] [alt 2. the application and all non-confidential documentation submitted and associated with it, including any supporting material] [alt 3. the Plan of Work and the accompanying plans and information] ~~[as well as the non-confidential parts of the test mining study]~~ on the Authority's website for a period of 60 90 Days, and notify and invite members of the Authority, [relevant] adjacent coastal States, [and any other States adjacent to the Exploitation Area when they are potentially the most affected States], Stakeholders, [and the general public] to submit comments in writing within 90 days, in accordance with the relevant Standards and taking account of the relevant Guidelines.

~~1(b) [(b) Request the Commission to provide its comments on the Environmental Plans [and the non-confidential parts of the test mining study] within the 90 Day comment period.]~~

[(c) [Based on the assessment of the Commission, if necessary,] Establish an independent review team, making use of the roster of competent independent experts, if any, to provide comments on the Environmental Plans within the comment period.]

2. The Secretary-General shall, within seven Days following the closure of the comment period pursuant to paragraph 1, provide all submissions received, ~~from members of the Authority, relevant adjacent coastal States, Stakeholders, the general public, the Commission,~~ and any comments from [the independent review team and] the Secretary-General to the applicant ~~for its consideration~~ and publish all submissions and comments provided on the website of the Authority.

2 bis. The applicant shall consider the comments provided pursuant to paragraph ~~(2)~~ (1) and ~~may~~ shall, as appropriate, revise the [alt 1. Environmental Plans] [alt 2. application] [alt 3. Plan of Work and the accompanying plans and information] or provide responses ~~in reply~~ to the [relevant and][substantive] comments, as to how they were taken into account and ~~[shall][may]~~ submit any ~~revised plans~~ revisions and responses to the [alt 1. Secretary-General] [alt 2. Commission]

3. The Commission shall, as part of its examination of an application under regulation 12 and assessment of applicants under regulation 13, examine the ~~Environmental Plans or revised plans [and the test mining study]~~ in the light of the comments submitted under paragraph (1), together with any revisions and responses provided by the applicant under paragraph (2 bis), and any additional information provided by the Secretary-General under paragraph (2).

4. Notwithstanding the provisions of regulation 12(2), the Commission shall not consider an application for approval of a Plan of Work until the [alt 1. Environmental Plans have] [alt 2. application has] [alt 3. Plan of Work and the accompanying plans and information have] been published and if necessary, revised in accordance with this regulation.

5 (d) any amendments or modifications to the [alt 1. Environmental Plans] [alt 2. application] [alt 3. Plan of Work] recommended by the Commission under regulation 14 [and changes subsequently made to application documents by the applicant];

6. In preparing its report under paragraph (5), the Commission shall [alt. may] seek advice from competent independent experts as necessary. ~~In such case, the Commission shall clarify the necessity of advice from experts and seek prior approval of the Council.~~ The experts shall be selected and appointed in accordance with relevant Guidelines [alt. Annex [tbc]]

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

Title: We strongly support the alt title which seems like the more appropriate heading for this provision.

Para 1 (a): Within draft regulation 11, paragraph (1), we prefer alt 2 which would then read, “Place the application and all non-confidential documentation submitted and associated with it on the Authority’s website”. This would mean the whole application is included in the public consultation process (save for confidential information), and not only the Environmental Plans. We consider this essential. It may be misleading to separate out parts of the Plan of Work and review them in isolation. The other parts of the application, including the Mining Workplan, Financing Plan, Training Plan, Maritime Security Plan etc. may contain information relevant to stakeholders commenting on an application. As such, we would like to see this DR11(1)(a) refer to the whole ‘application’, rather than the ‘Environmental Plans’. Consideration could then be given to aligning and assimilating this DR11 with DR9, so that there is need only for 1 notification process. Currently the SG is required to notify member States under both DR9 and DR11, in similar, but differently worded timeframes). We also support the proposal to increase the timeline for consultation to 90 days.

Para 1 (b): We would like more clarity about para (b) and also wonder if it should be deleted. The LTC will conduct its own review of the application, as noted in DRs12(3) and (5) in order to inform its recommendation. That review will include the results of the stakeholder consultation. It seems inefficient for the LTC to do an initial review during the same timeframe as the stakeholder consultation, and then do another review again afterwards. We also consider that this sub-paragraph (b) could conflict with sub-paragraph 12(4), which specifically prevents the LTC from reviewing an application until after the stakeholder consultation period has expired. So it seems to us that (b) could be deleted, to avoid confusion and conflict between provisions. And the LTC can commence its review after the stakeholder consultation has been run.

Another alternative that we could support, would be for the LTC to do its review, and then to run a stakeholder consultation on the application and the LTC's draft report - so the public has an opportunity to comment on and influence the LTC's report and recommendations before they are finalised. The reason we suggest this is that stakeholders should already have been given an opportunity to comment on the EIS and EMMP during the EIA process under consultations run by the applicant. And those stakeholder comments should already be included in the application. Hence it could make sense for the ISA's consultation on the application to include new material, such as the LTC's initial findings.

Para 1 ©: As a general comment, we strongly support the LTC integrating external expertise into its decision making. Clearly a review of an application for a plan of work needs to rely heavily on scientific and technical advice. As the ISA's technical and scientific advisory body, the Legal and Technical Commission is the body responsible to provide the Council with this advice. But it is well established that the LTC, has an overwhelming workload and does not possess adequate environmental expertise within its membership to adequately discharge its varied duties. There are also organizational and structural issues of transparency and accountability within the LTC's working methods that may compound questions of legitimacy. While issues regarding the LTC's composition and working methods can be improved to an extent, it is difficult to conceive of any structure that will endow a limited membership, all-volunteer body with sufficient expertise to make evidence-based recommendations for a highly complex, new industry in a poorly understood environment, such as the deep-sea. Reforming the LTC's composition and working methods is one essential objective, but a complementary approach would be to encourage the LTC's solicitation and incorporation of external expert advice. Which can be done without undermining or eroding the LTC's role in any way.

The regulations currently speak of a 'roster of competent independent experts' in several areas - this needs to be fleshed out more - perhaps in a new Annex XI, setting out a process for identification and selection of competent independent experts.

Para 2: If the reference here to types of stakeholders is deleted as proposed, then a cross reference to para 1 might be warranted. Therefore, the para would read, "The Secretary-General shall, within seven Days following the closure of the comment period pursuant to paragraph 1, provide all submissions received".

Similar to the reasons outlined for our preference in para 1(a), we would similarly support alt 2 proposals in para 5, para 5 (d) and para 2 bis

Additionally in para 2 bis, we don't have a strong view on the timeline, but wonder if it could be deleted, on the basis that any delays in an application process seem likely to be more a matter of material concern to the applicant than the ISA. So it could reasonably be left in the

applicant's hand as to how long they wish to take to respond to the comments received. We cannot think of a reason why the ISA itself would want to rush matters here.

Para 3: We strongly prefer the retention of this para. We believe the comments received from members of the Authority and other stakeholders will be a valuable resource for the Commission to utilize in its own assessment of the application

Para 6: We strongly support retaining para 6 to provide the Commission flexibility in who it seeks advice from in preparing its report. We support deleting the requirement to seek prior permission from the Council to do so, however – the LTC should be empowered and encouraged to seek and integrate best available science and information from independent experts as it sees fit. For this reason, we are in favour of 'shall' rather than 'may' in this paragraph. In this regard, we would draw attention to the modifier 'as necessary'. This leaves a degree of discretion to the LTC to seek expertise externally only where they do not find it within their own membership. So the paragraph does not inappropriately fetter the LTC's autonomy. But including the requirement in paragraph (5) here is important nonetheless as it gives the Council, an applicant or other third party a means to challenge the LTC's decision in the event that the LTC were inappropriately to conduct their review with limited internal expertise and not seeking external expertise. This is an important aspect of institutional accountability, and access to justice that the LTC may be held to certain standards of procedure and quality of decision-making. So we consider the inclusion of this paragraph, and the 'must... where necessary' wording very important. (If the wording is retained with 'may' then the paragraph seems to us pointless). We do note that there may be some overlap with DR11(1)(c) and this paragraph (6), and consider these could be consolidated - provided the point is not lost.