

**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:

President's Text

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 28

*Blue font are proposed amendments by the Council President.

*Pew's amendments are indicated as in-line edits in red font.

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 Contractor shall maintain Commercial Production in accordance with the exploitation contract and the Plan of Work annexed thereto and these regulations, and market conditions. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates contemplated in the Mining Workplan, as may have been updated on the basis of in the Feasibility Study.
2. Save for a situation covered by regulation 29, the Contractor shall notify the Secretary-General and the Sponsoring State or States if it:
 - (a) fails to comply with the level of Commercial Production set out in the Plan of Work ; or
 - (b) determines that it will not be able to adhere to the level of Commercial Production set out in the Plan of Work in future,

in which case the Contractor shall request a modification of the Plan of work, in accordance with regulation 57, or the Authority shall consider taking relevant compliance actions aimed to address the failure to adhere to the Plan of Work.

3. Notwithstanding paragraph 1 above, the Contractor shall immediately suspend ~~Exploitation activities production~~ whenever such ~~reduction-or~~ suspension is required to protect the Marine Environment ~~from Serious Harm or a threat of Serious Harm~~ or to protect human health and safety ~~to protect the Marine Environment from Serious Harm or a threat of Serious Harm, to protect human health and safety~~ or to protect human remains, objects or sites of archaeological or historical nature. ~~Where the situation in question falls within regulation 33, the Contractor shall follow that regulation and the process it prescribes. In any other circumstances, a~~ Contractor shall notify the Secretary-General and the Sponsoring State or States of such a ~~reduction-or~~ suspension of

production as soon as is practicable and no later than [72] [24] hours after production is ~~reduced or~~ suspended, and Regulation 29 bis shall apply.

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

Para 1: It appears from DR28(1) that the rate of mining contemplated in the Feasibility Study becomes an obligatory requirement for the Contractor. But the Feasibility Study is not a part of the Plan of Work or the exploitation contract (see Annex X), and nor is its content agreed or approved by the ISA. For this reason, it seems to us that it may be more legally sound for the Feasibility Study's results to inform an amendment to the Mining Workplan, and then for the mining rates to be set out in that revised Mining Workplan. Noting that the Mining Workplan is part of the Plan of Work Contract, is subject to ISA approval, and is already supposed to contain details of expected recovery rates (see Annex II). So we suggest to amend reference here from the 'Feasibility Study' to the 'Mining Workplan, as may have been updated following the results of the Feasibility Study'.

Para 2: Drafting remains unclear in this para: it appears to refer to any failure to comply with the Plan of Work, which we do not believe is the intention of this DR28 entitled 'Maintaining Commercial Production'. Our understanding is that this provision is meant to refer to a failure to maintain Commercial Production (and so we suggest re-drafting to say that more precisely). Paragraph (2) also fails to address what happens if the Contractor notifies the SG of such non-compliance, or inability to adhere to the Plan of Work. This should be added, and we suggest the relevant actions would either be an application to modify of the Plan of Work by the Contractor, or a compliance response from the ISA. We would also suggest cross-reference here to DR29, to clarify that a reduction of production due to market conditions that has been approved following the DR29 process, does not fall under the remit of this DR28(2).

Para 3: With regards to paragraph 3, there seems to be some possible overlap between DR28 (suspension of production due to anticipated harm to the environment or human health) and DR33 (not proceeding with Exploitation due to anticipated Incident), but each prescribes different processes. We suggest that DR28 could cross-refer to DR33, and prefer that process to be followed, in the event of an Incident. In addition, the Council and public should be notified by the SG of any reduction or suspension as well as the recommencement of Commercial Production. As mentioned previously, we also recommend a new DR29 bis, to set out consistent procedures to be followed in the event of any suspension under these regulations, noting that there are currently numerous different regulations that can trigger suspensions, each with its own terminology and inconsistent (or non-existent) process requirements, which may lead to regulatory confusion. If this is an acceptable approach paragraph 4 could be moved to that new regulation.