

**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 4

Red text is in original draft; magenta text indicates Pew's new textual proposals or support for a proposal from a range of options

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.

4. Contractor measures pursuant to paragraph 3 ~~Such measures by Contractors shall include:~~

(a) consulting with any potentially affected coastal State **in accordance with Article 142 of the Convention, and as identified in the relevant Regional Environmental Management Plan, prior to submitting an application for approval of a Plan of Work**]; and

7. If the [Commission] determines, in accordance with the relevant Standards and taking into account Guidelines, that there are clear grounds for believing that, as a result of the Contractor's operations:

(a) Serious Harm or the threat of Serious Harm to the Marine Environment is likely to occur or has occurred **as the result of Contractor operations**, the Secretary-General shall notify the Sponsoring State, and [the Commission] shall recommend that the Council issue an emergency order, which may include an order for the suspension or adjustment of operations, pursuant to article 165(2)(k) of the Convention and take all necessary measures to prevent Serious Harm to the Marine Environment. Such recommendation shall be taken up by the Council on a priority basis. Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with regulation 28(3); or

8. In the case of harmful effects to the Marine Environment within any national jurisdiction resulting from the activities of the Contractor, or in the case of exploitation of resources lying within national jurisdiction without the relevant State's consent, the Contractor shall be [strictly] liable for any response and clean-up costs, and for any damage that cannot be fully contained, mitigated or repaired[, and the Authority shall require the Contractor to pay compensation, proportionally to the damage caused] **and taking into account any compensation already claimed against the Contractor in national proceedings brought in accordance with Article 235 of the Convention.**

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

In para 8, we support the retention of the bracketed text. The paragraph may also benefit from an addition at the end 'taking into account any compensation already claimed against the Contractor in national

proceedings brought in accordance with Article 235 of the Convention’ so it is clear that a Contractor should not be doubly penalised for the same issue in separate fora.

We would also like to express our support to para 3.

3. Contractors shall take all measures **required and** necessary to ensure that their activities are conducted so as not to cause harmful effects to the Marine Environment, including, but not restricted to, pollution, damage to the flora and fauna, **interference with the ecological balance of the Marine Environment including ecosystem structure, function and resilience** and other hazards to the Marine Environment in areas under the jurisdiction or sovereignty of coastal States, and that such harmful effects or pollution arising from **Incidents or** activities in its Contract Area do not spread into areas under the jurisdiction or sovereignty of a coastal State.

The duty here should be to avoid any harm in any State’s national waters. Coastal States are likely to wish to avoid any effect upon their marine environment and activities in their jurisdiction; and the current draft seems in keeping with the ‘no harm’ duty whereby States shall ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (reflected in the Stockholm Declaration in 1972, the Rio Declaration (Principle 2), the Convention on Biological Diversity (Article 3), and the UNFCCC (recital 8 of its preamble) and now recognised as customary international law).

We recognise that the proposed insertion in relation to ‘ecological balance’ reflects the wording used in Article 145 of UNCLOS, and thus is appropriate. We note however that in other fora different terminology tends to be used for a similar or the same meaning, for example: ‘ecosystem integrity’. For this reason it may be helpful for the ISA to add a definition to the Regulations of ‘ecological balance’ in order to clarify what it means, and this may be done with cross-reference to other terms and principles that the international community now uses, which may have superseded the language of ‘ecological balance’.