

**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.

DR 46

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**.

46bis - Delete

**Regulation 46ter
Environmental Management and Monitoring Plan**

1. Each applicant or Contractor for Exploitation shall prepare an Environmental Management and Monitoring Plan in accordance with this regulation and Annex VII.
2. The purpose of an Environmental Management and Monitoring Plan is to manage and confirm that observed Environmental Effects **are consistent with predicted Environmental Effects from the Environmental Impact Assessment and does not breach any of the Rules of the Authority, including meet** Standards on environmental quality objectives **indicators and quantitative environmental thresholds environmental performance for the mining operation.** The plan shall address any issues that arise from the Environmental Impact Statement and will set out commitments and procedures on how **to monitor, Mitigate, and manage** the Environmental Effects of Exploitation of the mining **operation will be monitored and mitigated** including on pollution control and Mining Discharge in Regulations 49 and 50.
- [3. The Environmental Management and Monitoring Plan shall include all elements and matters prescribed by the Authority in Annex VII to these regulations and shall:
 - a. Be based on the Environmental Impact Assessment and the Environmental Impact Statement;

- b. Be prepared in accordance and consistent with the applicable Regional Environmental Management Plan,
- c. Be prepared in accordance and consistent with the applicable Standards ~~developed in accordance with Regulations 45 and 94~~ and taking account of the applicable Guidelines, as well as Good Industry Practice, ~~Best Available Scientific information~~, Best Environmental Practices ~~and Best Available Techniques~~;
- d. Be prepared in accordance and consistent with other plans in these regulations, including the Closure Plan and the Emergency Response and Contingency Plan;
- e. Incorporate site-specific environmental objectives and environmental performance standards, which are compatible with and designed to achieve the environmental policy and objectives of the Authority and applicable Standards;
- f. Incorporate measurement criteria, ~~thresholds of the Authority defined in the~~ in accordance with the applicable Standard and reflect its methodology to determine whether the environmental quality objectives are being met and that the operation is compliant with ~~applicable environmental Standards and other the Rules of the Authority~~,
- g. Incorporate any recommendations made by the Commission, and approved by the Council, in its consideration of the Environmental Impact Statement, including commitments and procedures on;
 - i. how the ~~environmental impacts~~ Environmental Effects of Exploitation~~the mining operation~~ will be monitored ~~in accordance with Regulation 46bis, the Environmental Management and Monitoring Plan EMMP Standard and the applicable Monitoring Standard~~,
 - ii. how the Mitigation measures, including pollution control and Mining Discharge in regulations 49 and 50, will be implemented,
 - iii. how the effectiveness of such measures will be monitored,
 - iv. how Preservation Reference Zones and Impact Reference Zones, designated in accordance with Annex Xter, will be utilised and implemented,
 - v. what the management actions and responses will be to the monitoring results and new knowledge
 - vi. what management and reporting systems will be adopted and followed, and;
 - vii. how continual improvement will be promoted, including by testing assumptions and predictions made in the Environmental Impact Statement, improving environmental knowledge, and reducing residual uncertainties remaining from the environmental impact assessment process.]

3bis ~~The Contractor shall conduct monitoring for the entire duration of exploitation.~~ In addition to the ~~Monitoring required to be environmental monitoring programme~~ performed by the Contractor, the Environmental Management and Monitoring Plan shall contain a supplementary monitoring programme for at least the first seven years of ~~Commercial Production mining operations, to be conducted by competent independent experts and~~ in compliance with the applicable Standards. The Contractor shall implement its Environmental Management and Monitoring Plan, including its environmental monitoring programme, from the effective date of the contract until the satisfactory completion of its Closure Plan ~~conduct monitoring for the entire duration of the mining operation and comply with any post closure monitoring requirement~~ according to Regulations 59-61 and the applicable Standard.

4. The Contractor shall provide information on the implementation and compliance of the Environmental Management and Monitoring Plan pursuant to Regulations 51 and 52 in its annual report in accordance with regulations 38, paragraph 2(g), and 46bis, paragraph 4, for evaluation by the Legal and Technical Commission, as well as environmental data and information for publicly release, in an accessible format, consistent with Best Scientific Practices monitoring data and information at a regular basis and where practicable in real time or on a monthly basis.

[5.The Contractor shall allocate sufficient resources and assign roles and responsibilities to implementation of the Environmental Monitoring and Management Plan in relation to the relevant risks and impacts.]

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

As a general comment, we believe 46bis should be deleted and relevant elements merged into DR46ter. We believe the amendments to paras 3 and 4 above are sufficient to capture the relevant elements from 46bis.

For paragraph (2), and in response to proposals from the matrix, we do not believe this should be moved to a Standard as this includes the fundamental objective of an EMMP which to us is sufficiently high level. Instead, we would like to see the purpose of the EMMP further expanded so that it will contain content designed to set specific commitments including to measure the observed Environmental Effects against those predicted in the EIS, and to monitor the Contractor's performance against all environmental rules of the Authority, including the Standards mentioned on quality objectives, and those on indicators and thresholds.

Regarding paragraph 3 and 3 bis, we believe these should also be retained in the regulations for the same reasons as mentioned for paragraph 2. For paragraph 3(g), we do believe that these subparagraphs could be moved to the EMMP Standard, though we are confused if these recommendations are being made while the LTC is reviewing the application for a Plan of Work and whether the Contractor's EMMP would need to be reviewed before the LTC provides its recommendation to the Council. For paragraph 3bis we suggest wording could be added to clarify the relationship between the EMMP and the Contractor's environmental monitoring programme previously mentioned in 46bis. Additionally, we agree with the intent of the last sentence that the EMMP, and monitoring obligations contained therein, should be extended until all activities, including post-closure monitoring, cease. We consider this would be more clearly drafted by referring to the effective date of the contract, as the start date, and the satisfactory completion of the Closure plan, as the end date.

For paragraph 4, we believe this can simply refer to draft Regulation 51, which pertains to 'Compliance with the EMMP' and already requires annual reporting and deals with data reporting frequency (also mentioned in DR46bis), and draft Regulation 52, which pertains to 'Performance Assessments of the EMMP' and requires reporting at least every 2 years".

Lastly, we believe paragraph 5 would be better placed in DR18bis regarding contractor obligations and broadened so that it is clear that the allocation of sufficient resources and assigned roles and responsibilities is needed for the entire Plan of Work not just the EMMP. 18bis already states " A Contractor shall carry out the proposed Plan of Work in accordance with these Regulations, Good Industry Practice, Best Available Scientific Evidence and Best Environmental Practices, using appropriately qualified and adequately supervised personnel." We believe sufficient resources and assigned roles and responsibilities could be inserted into that provision.