

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 84 and 85

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.

DR 84 1. A Contractor shall pay to the Authority, [alt 1. from the date of commencement of Commercial Production in a Contract Area][alt 2. from the effective date of an exploitation contract and for the term of the exploitation contract and any renewal thereof] an annual fixed fee. The amount of the fee shall be established by the Council as required under paragraph (1)(d) of section 8 of the annex to the Agreement: on the advice of the Finance Committee, and with the aim to cover the likely costs associated with the Authority's management of the contract, including staffing the Secretariat and conducting inspection and enforcement activities.

DR 84 para 4: [4. In any Calendar Year, the annual fixed fee may be credited against any royalty or other amount payable under Part VII of these regulations.]

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

General comment on DR 84: Consideration should be given to deleting this DR84, and including the anticipated administrative costs of reviewing annual reports in the fixed annual fee required under DR85 (which may be applied throughout an exploitation contract, rather than only during a period of Commercial Production). It would seem easier to administer a single fee.

DR 85 subpara 1: We support the edits reflected in para 1. It is important that the ISA is properly capacitated to fulfil its mandated regulatory functions, and also that the costs of that capacitation are appropriately allocated to the parties who stand most to benefit from it. See Mark Squillace, 2021: Best regulatory practice for deep seabed mining "The ISA must consider an annual fee sufficient to cover the likely costs associated with reviewing applications and carrying out inspection and enforcement

activities during the period of commercial production, which may be significant.” Presuming this is indeed the purpose of this annual fixed fee, then it would more sensibly start from contract commencement date (not from the date of Commercial Production, which may be achieved some years after the contract has started). If this amendment is made, then the annual reporting fee in DR84 could be deleted, and rolled up into this annual fixed fee instead.

DR 85 subpara 4: This provision would mean that for each dollar of revenue collected from the annual fixed fee, the royalty payment will be reduced by a dollar, so royalties paid would not increase the ISA’s overall revenue collections. That is effectively funding the ISA’s regulatory costs out of a pot that would otherwise be distributed for the benefit of humankind, and particularly developing countries. If the purpose of this fee is to cover ISA costs, it would be more sensible not to credit it against the royalty. We would therefore propose deleting this para.