

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29<sup>TH</sup> SESSION:  
COUNCIL - PART II**

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](mailto:council@isa.org.jm).

**1. Name(s) of Delegation(s) making the proposal:**

The Pew Charitable Trusts

**2. Please indicate the relevant provision to which the textual proposal refers.**

Draft regulation 15

**3. 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. Taking into account Regulations 12(4) and 13, if the Commission determines that the meets the relevant requirements, it shall [alt. may] recommend approval of the Plan of Work to the Council.~~

~~1. If the Commission determines that the application meets the criteria set out in Regulations 12(4) and 13, it shall recommend approval of the Plan of Work to the Council.~~

~~[1. Alt. If the Commission determines that the applicant meets the criteria set out in regulation 13, it [shall][may] recommend approval of the Plan of Work to the Council.]~~

~~1. Subject to regulation 16, if the Commission determines that the application and the applicant meet the criteria set out in regulation 13, and the Commission has sufficient information to determine that all requirements in Regulation 13 have been met, it [may] recommend approval of the Plan of Work to the Council.~~

1. bis The Commission shall accompany any recommendation for approval made under paragraph 1 with:

(a) a summary of the deliberations of the Commission including what inputs have been taken into account and how these have been assessed, as well as divergences of opinion in the Commission, if any;

(a) bis a summary of any uncertainties inherent in the Plan of Work and how the applicant is proposed to address these;

(b) any conditions the Commission considers appropriate to deal with adverse effects of the proposed activities; and

(c) a draft Contract indicating the proposed initial term pursuant to regulation 20.

2. The Commission shall not recommend approval of a proposed Plan of Work if:

(a) the Plan of Work does not comply with, or the Commission is unable to determine whether the Plan of Work complies with, [either alone or in combination with other activities and impacts], all requirements stipulated in Regulation 13 [, including because of scientific uncertainty or inadequate Information]

~~(a-alt 1.) the Plan of Work does not comply with, or the Commission is unable to determine whether the Plan of Work complies with, all requirements stipulated in Regulation 13;~~

~~(a-alt 2.) The Commission is unable to determine that the Plan of Work either alone or in combination with other activities and impacts ensures effective protection of the marine environment, based on the criteria set out in Regulation 13(4) (e) (e) and (f), on~~

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the basis of Best Available Scientific Information, and applying the precautionary approach

~~(a alt 3.) Pursuant to Regulation 13(4)(e) (e) and (f), the Plan of Work fails to provide for the effective protection of the marine environment from harmful effects that may arise from the proposed activities, or if the information is sufficiently uncertain or inadequate to determine, pursuant to Regulation 13(4)(e) (e) and (f), that the Plan of Work provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities.~~

~~(a alt 4.) The Commission determines that the Plan of Work either alone or in combination with other activities and impacts does not ensure effective protection of the marine environment, based on the criteria set out in Regulation 13 (4) (e), on the basis of Best Available Scientific Information.~~

(b) part or all of the area covered by the proposed Plan of Work is included in:

~~(i) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant;~~

~~(ii) A Plan of Work approved by the Council for Exploration or Exploitation of other Resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved Plan of Work for other Resources;~~

~~(iii) An area disapproved for Exploitation by the Council pursuant to Article 162(2)(x) of the Convention; or~~

~~{(iv) an area for which a spatial or temporal protective measure has been established by the ISA that is incompatible with the Plan of Work Area of Particular Environmental Interest or any other site disapproved for exploitation by the Council, [or that sets a spatial or temporal protective measure], as determined indicated in the applicable Regional Environmental Management Plan;}~~

~~{(v) any other area designated for preservation for reasons of special biological, scientific, archaeological, historic, cultural, aesthetic or wilderness significance;}~~

~~(vi) A Reserved Area or an area designated by the Council to be a Reserved Area, except in the case of eligible applications under these Regulations made in respect of a Reserved Area;~~

~~{(vii) An area that has not been subject to prior Exploration activities;}~~

~~{(viii) An area not covered by a Regional Environmental Management Plan.}~~

~~{(c) Such approval would undermine or contradict [the Strategic Environmental Goals or Objectives pursuant to [Regulation 44 ter] or the regional goals, objectives or measures set out in the [relevant] applicable Regional Environmental Management Plan.}~~

~~{(d) Such approval would pose a reasonable risk of damage to an in-service or planned submarine cable or pipeline, or cause undue interference with the freedom to lay submarine cables and pipelines when considered in conjunction with other approved Plans of Work [or is otherwise unable to give reasonable regard to other marine users in the area under application.}~~

~~{(e) There is inadequate, [insufficient] or substandard environmental baseline information for the area covered by the proposed Plan of Work, or any part of that area.}~~

(...)

4. If the Commission determines that it will not recommend approval of the Plan of Work [for any reason]~~{pursuant to paragraphs (1) (3)}~~ the applicant does not meet the ~~{criteria}~~ requirements set out in ~~{regulation s 12, 13 and 14}~~ the regulations, the Commission shall so inform the applicant in writing, by providing the reasons why ~~any {criterion has}~~ any requirements set out in Regulation 13 have not been met by the applicant or why the Commission has been unable to make a determination, and shall provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant. During this period the Commission shall not make a recommendation to the Council on the application.

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

As currently drafted, paragraph (1) seems somewhat confused between the three different versions that were in the previous draft text. We have provided alternative language. Like, Germany, Costa Rica, and France, we would

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prefer this para 1 to read 'may' not 'shall', to allow the LTC (and the Council) to retain a general discretion to approve or disapprove the Plan of Work on the basis of their assessment, and to avoid any pathway for automatic approval. However, if DR13 and DR16(2)-(4), once settled, contain sufficient criteria to enable all relevant considerations to be taken into account, to enable a recommendation of disapproval where appropriate, 'shall' could be used.

We recommend in paragraph (1)(bis)(c), after the wording '*a draft Contract*', to add the following text: '*indicating the proposed initial term pursuant to regulation 20*'. This is to avoid the maximum term being awarded every time by default, when that may not be the best way to achieve the ISA's various objectives as set out in DR13.

In sub-paragraph (2)(b)(iv), we suggest instead of referring particularly to '*an Area of Particular Environmental Interest*' the paragraphs should instead refer to any '*area for which a spatial or temporal protective measure has been established by the ISA that is incompatible with the Plan of Work*'. This language may be helpful, as REMPs being developed now for different regions and mineral deposit types are envisioning a number of management tools that may not be called 'APEIs' or may have restrictions other than a specific disapproval for exploitation, but which nonetheless would need to be taken into account in approving an area for Exploitation. Alternatively, it is possible that paragraph (2)(c) of DR15 covers the same issue adequately in which case this could be deleted.

In relation to paragraph (2)(b)(v) which covers other designations for preservation, we agree that such designations should be taken into account in the ISA's decision-making, but the drafting here may be rather ambiguous. We suggest that these designations should be reflected and recognised in the relevant REMP (as may be updated from time to time), so that all parties are clear which designations are relevant for each region.

With regards paragraph (2)(b)(vi) relating to reserved areas, we reiterate comments made in relation to DR8, which recommend that DR8 should set out clear eligibility criteria for reserved areas, so that there are criteria that reflect UNCLOS. Specifically

- Article 9 of Annex III to UNCLOS, which stipulates that a plan of work for a reserved area can only be considered if the Enterprise has taken a prior decision not to carry out activities in that reserved area, and if the applicant is a developing State or sponsored by a developing State; and
- Section 2(5) of the Annex to the 1994 Agreement, which adds that an application for a reserved area is also permitted where the applicant is the contractor who contributed the original reserved area, and the Enterprise has independently functioned for 15 years without submitting an application for the reserved area; but only where the applicant offers to include the Enterprise as a joint venture partner.

Like Canada and Argentina, we do believe there is merit for simplifying this regulation, in particular paragraph 2. These requirements should already reflected in DR13. If this is indeed the case then a cross reference to DR13 should sufficient/achieve the same policy intention.

In paragraph (4), we consider that retention of '*for any reason*' would help avoid inadvertently fettering the LTC's discretion and that there is no need to include the proposed extra language that narrows the types of 'reasons why' the LTC may provide.

We also agree with the statement made by Portugal about LTC members recusing themselves from if they are a national of the Sponsoring State or have done work for the prospective applicant. This will avoid conflicts of interest e.g. possibly taking a decision on an application that was in fact prepared by this LTC member.