

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH 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.

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 18

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.

3. Notwithstanding the right to conduct marine scientific research in areas beyond national jurisdiction, the Authority, in consultation with a Contractor, ~~[and with the cooperation of States Parties to the Convention,]~~ shall ensure, that no other ~~entity~~ Contractor operates in the Contract Area for a different category of Resources ~~or otherwise~~ in a manner which might interfere with the rights granted to, ~~or operations of~~ the Contractor.

(...)

5bis. Adverse Environmental Impacts from activities in the Area carried out under an Exploitation Contract must be limited to the Contract Area.

(...)

7. In relation to Exploration activities in the Contract Area conducted under an Exploitation Contract:

(a) The Contractor may conduct Exploration activities within the Contract Area, in accordance with the proposed Exploration programme included in the Mining Workplan;

(b) ~~The applicable Exploration Regulations shall continue to apply and~~ the Contractor shall exercise due diligence in conducting Exploration activities in the Contract Area and shall report the results of its Exploration activities to the Authority in accordance with Regulation 38(2)(k) and applicable Standards, taking into consideration Guidelines; and

(c) The Contractor shall also take into account:

(i) any recommendations issued by the Commission pursuant to the Exploration Regulations; and

(ii) provisions of the Exploration Regulations that relate to the Protection and Preservation of the marine environment, and environmental baselines and monitoring.]

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

General Point: We see that the Consolidated Regulations text has adopted an alternative definition of ‘Contractor’ in the Schedule to the Regulations, to include any ‘*party to an Exploitation Contract (other than the Authority)[...]*’ This is presumably intended to encompass the Enterprise as well as other Contractors, however we are not sure that this formulation works without necessitating further amendments in the Regulations. There are some uses of ‘Contractor’ in the Regulations that we do not believe are intended to include the Enterprise. One example would be references to ‘*Contractors entering into joint ventures with the Enterprise*’; or Regulations pertaining to the payment regime. Also, we note this amendment has not been applied consistently in the Consolidated Regulations, as the text still includes numerous references to ‘*Contractors and the Enterprise*’ or ‘*Contractors or the Enterprise*’ e.g. DR3, DR4 etc. We consider that further consideration needs to be given throughout the Regulations to the issue of which Regulations apply to the Enterprise in the same way they apply to other Contractors, and which do not, and where there may be a need for additional provisions in the Regulations to cover the particular situation of the Enterprise.

As mentioned by Germany, Costa Rica, UK, US, Norway and Portugal, we are concerned about the replacement of ‘no other Contractor’ with ‘no other entity’ in paragraph (3) which would purport to give the ISA powers beyond its reach. The ISA should not be seeking to control, for example, the operations of cable layers or marine genetic resource prospectors, or to undermine internationally agreed conservation measures within the Contract Area. We are also unclear from the new drafting as to whether the drafting ‘or otherwise’ could include operations outside the Contract Area. We suggest this new wording be deleted.

Like Germany, Costa Rica, and Portugal we support the reinsertion of 5bis. If environmental impacts are not limited to the Contract Area, then we would recommend a clear process in the event there are disputes amongst contractors regarding who is at fault for environmental impacts/effects outside the Contract Area and which have the potential to overlap with the activities of other Contractors.

Lastly, in DR18 sub-paragraph (7)(b), the previously deleted wording ‘*The applicable Exploration Regulations shall continue to apply and*’ has been reinstated. We agree with Germany, UK and Costa Rica that this needs to be deleted again. The use of ‘applicable’ renders its meaning unclear, and its legal effect potentially unenforceable. Many of the Exploration Regulations cannot logically apply to Exploration under an Exploitation Contract, and to suggest they should could; others would impose an unfair duplicative burden if applied or could cause confusion by overlapping inconsistently with the Exploitation Regulations. If retained it may be helpful to link to a Standard which would indicate those exploration regulations that would/would not apply.