

**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 31

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. Contractors shall, consistent with any applicable Standards and taking into consideration Guidelines, carry out ~~[Exploration and] exploitation~~ [activities] under an Exploitation Contract with reasonable regard for other activities and infrastructure in the Marine Environment, in accordance with Articles 87 and 147 of the Convention, [the Plan of Work] ~~and the approved Environmental Management and Monitoring Plan, [Regional Environmental Management Plan], and Closure Plan~~ [and any applicable international rules and standards established by competent international organizations].

1. bis Each Contractor shall exercise due diligence to ensure that it does not cause damage to ~~known~~ submarine cables or pipelines or interfere with other activities in the Contract Area or surrounding Marine Environment. In particular, the Contractor shall:

(a) Comply with the measures it agreed with the operators undertaking other [activities in the Contract Area or surrounding Marine Environment, including operators of and of submarine cables and pipelines] to reduce the risk of damage to any in-service cables and pipelines;

(a) bis Identify current and planned uses or activities in the Marine Environment transiting, overlapping, or proximate to the Contract Area through publicly available data and resources and any other reasonable means, including but not limited to marine scientific research, submarine cables or pipelines, fishing, navigation, activities related to marine genetic resources, and environmental protection measures and area-based management tools established or proposed by competent international organizations;

(a) ter Coordinate directly with the responsible organisations for, or operators of, these activities in the Marine Environment in order to reduce the risk of interference and damage to any structure or the Marine Environment; and

~~(b) Ensure that any activities it conducts will not interfere with the route of a planned submarine cable or pipeline, recognized sea lanes essential to international navigation, or areas of intense fishing activity.~~

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

In paragraph (1), we support statements made by Australia, UK and US regarding deletion of ‘known’ as this inappropriately limits due regard obligations. We support Norway that the words ‘exploration and Exploitation’ could be deleted, as these are already covered by the words ‘activities under an Exploitation Contract’. Similarly,

the specific references to the EMMP and Closure Plan are also redundant, if the reference in paragraph (1) to the 'Plan of Work' is retained (which we would support), as the Plan of Work encompasses all the Contractor's plans covered by the Contract. Like Costa Rica, we consider it important that the reference to the REMP is retained here in paragraph (1). REMPs should be the ISA's principal tool for mapping out other marine uses and activities in the relevant region, to which Contractors should have due regard.

Re sub para 1(bis)(a) - the obligation here should relate not only to the Contract Area, but also the surrounding Marine Environment. The Contract Area, as currently defined, means only the seafloor, and would not cover activities in the water column or ocean surface, which additional zones Article 147 does include in its scope by reference to the 'marine environment'.

Like Australia and Costa Rica, we support sub-paragraphs 1(bis)(a)(bis) and (a)(ter), These are reflective both of the broad range of ocean users who may be relevant (including matters requiring governance cooperation under the BBNJ agreement), as well as reflective of the focus of Article 147(2) of UNCLOS (to prevent '*interference [...] to the use of recognised sea lanes essential to international navigation or in areas of intense fishing activity.*') We consider these sub-paragraphs helpful in supplying further detail as to *how* Contractors can comply with the 'reasonable regard' duty, including by establishing a continuing obligation upon Contractors to check public information about vessel movements around the Contract Area, and to conduct proactive outreach to other marine users identified.

If paragraph (1)(bis)(b) seems duplicative of previous subparagraphs, so recommend it be deleted or merged into the preceding paragraphs.

With regards paragraph (1) generally, we also query (as mentioned previously by member State delegations) whether this DR31 should include a complaints mechanism to enable proponents or operators of other marine activities to inform the ISA in cases where the Contractor may have breached its obligation to have reasonable regard for other activities? As mentioned previously, we note that this may be dealt with by a general third-party complaints mechanism.