

**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 4

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.

Support (3)(a), particularly the reference to REMPs as a primary tool for identifying relevant coastal State.

Recommend harmonizing paragraphs 4-7 with regulations DR28/29ter, DR33 and DR96 quarter for clarity.

6. If the [Commission] determines, in accordance with the ~~applicable relevant~~ Standards and taking into ~~consideration account~~ Guidelines, that there are clear grounds for believing that, as a result of the Contractor’s operations:

(a) Serious Harm or the threat of Serious Harm to the Marine Environment is likely to occur or has occurred, the Secretary-General shall notify the Sponsoring State, and [the Commission] shall recommend that the Council issue an emergency order, which may include an order for the suspension or adjustment of operations, pursuant to Article 165(2)(k) of the Convention ~~and take all necessary measures to prevent Serious Harm to the Marine Environment~~. Such recommendation shall be taken up by the Council on a priority basis. Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with Regulations 28(3) ~~and 29bis~~; or

(b) Other harmful effects, or threat of harmful effects, to the Marine Environment is likely to occur or has occurred, the Secretary-General shall notify the Sponsoring State, and the [Commission] shall recommend that the Council issue a compliance notice pursuant to Regulation 103 or direct an inspection of the Contractor’s activities pursuant to Article 165 (2) (m) of the Convention and Part XI of these Regulations.

7. In the case of harmful effects to the Marine Environment within any national jurisdiction resulting from the activities of the Contractor, or in the case of ~~e~~Exploitation of resources lying within national jurisdiction without the relevant State’s consent, the Contractor shall be ~~strictly~~ liable for any response and clean-up costs, and for any damage that cannot be fully contained, mitigated or repaired, [and the Authority shall require the Contractor to pay compensation, proportionally to the damage caused] ~~[and taking into account any compensation already claimed against the Contractor in national proceedings brought in accordance with Article 235 of the Convention]~~.

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

We consider it important for DR4 to include express wording clarifying how relevant coastal States are identified and not to leave this either to the discretion of individual Contractors or the Secretary-General. Subsequently, and as mentioned by Costa Rica, Brazil, France and Germany we support reference to REMPs in paragraph (3)(a), as a source for identifying coastal States with relevant interests.

We support paragraph (2) as reflecting the legal duty of ‘no harm’, whereby States shall ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (reflected in the Stockholm Declaration in 1972, the Rio Declaration (Principle 2), the Convention on Biological Diversity (Article 3), and the UNFCCC (recital 8 of its preamble) and now recognised as customary international law). We are unsure why the wording relating to ‘ecological balance’ has been deleted. We found this helpful as drafted, as both reflecting the wording used in Article 145 of UNCLOS, and also explaining it in more modern and operational terminology.

Regarding paragraphs (4)-(6), we broadly support the intention of this proposed text. Though we note that consolidation may be needed between these paragraphs and other DRs dealing with compliance, as the UK also mentioned. This includes DR96 quater, which covers a situation in which a coastal State has grounds for believing harm is caused by activities in the Area and notifies the Chief Inspector to request an inspection. There is also potential overlap with DR28(3)/29bis (where the Contractor shall immediately suspend production whenever required to protect the Marine Environment) and DR33 (where the Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable to cause or contribute to an Incident.) Currently the different processes in DR4, DR28, DR33 and DR 96 quater could be triggered by the same issue and run concurrently, but involve different parts of the ISA and produce different results, which is confusing to us.

Other drafting point:

- In paragraph (6)(a) the wording ‘and take all necessary measures to prevent Serious Harm to the Marine Environment’ is unclear. We cannot interpret whether this wording is meant to place a duty on the Commission to take such measures; or whether it is suggesting that the LTC recommends the Council to take such measures; or whether it is suggesting that the Council’s order may require the Contractor to take such measures. This drafting should be clarified, otherwise it should be deleted. We also consider a cross-reference to the process for suspension contained in DR29bis may be useful in paragraph (6)(a) where a suspension is envisaged.

In paragraphs (4) and (7) there is a description of ‘*Exploitation of resources lying within national jurisdiction*’. ‘Exploitation’ with a capitalised ‘E’ is a defined term (in the Schedule) which relates specifically to the Area, so we suggest that the defined term is not used in the specific context of paragraphs (4) and (7) where national jurisdiction resources are the subject, not the Area.