

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL - PART II**

Informal Working Group – Institutional Matters

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@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.

DR 3

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.

- The facilitator’s proposed amendments are reflected in **red**.
- Our proposed amendments are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

(i) The Authority may issue reasonable requests to Contractors, the Enterprise, and member States to participate in joint research or test activities in accordance with directions issued by, and under the control of, the Authority, in order for the Authority to test proposed or adopted rules, regulations and procedures, as well as monitoring practices, and other institutional functioning.

(j) Contractors, the Enterprise, and member States shall cooperate with requests under paragraph (i).

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

Regarding **paragraph a**, we support alt 1 language as inclusion of ‘best endeavours’ and ‘reasonably’ would unnecessarily reduce the standard of cooperation required from States and Contractors from the previous absolute duty to cooperate. Concerning alt. 2, as regulations are likely to impose recurring data requirements made in the ordinary course of business, a general requirement that the duty to cooperate in exchanging data is only triggered on a written request from the Secretariat as proposed could be problematic. We recommend this not be adopted

In **paragraph b**, we presume that these Regulations would not bind a flag State that is not a member State of the ISA. This could cause an issue for inspections or information-gathering, given a flag State’s exclusive jurisdiction over vessels on the high seas. Consideration may be given to inserting a requirement in the Regulations for all vessels used in Exploitation activities to be registered with a flag State that is a member of the ISA (and preferably the sponsoring State, to enable the most streamlined approach to regulation and

enforcement). Alternatively, the ISA and/or the sponsoring State may need to explore bilateral agreements with non-ISA member flag States for the facilitation of DSM-related investigations into and on-board vessels used for activities in the Area, which may be cumbersome or ineffective. Regardless, careful crafting of regulations will be needed to ensure the ISA can carry out its duties without exceeding powers given to it by UNCLOS and avoid giving rise to regulatory gaps, ambiguity, or conflict. We would welcome a study that has previously been requested, to consider some of the jurisdictional issues arising between States and the ISA, and would suggest an inter-sessional event on these complex issues may also be helpful.

Regarding **paragraph c**, we prefer alt 1. While responsibility for stakeholder consultation around the ISA's decision-making must rest with the ISA itself, sponsoring States also have a similar obligation in their own right.

Also, the ISA Secretariat's ongoing work on the Authority's 'Communications and Stakeholder Engagement' strategy should be aligned to support this provision, presuming they both are intended to address the same matters. For the avoidance of doubt, the draft Communications and Stakeholder Engagement Strategy shared by the Secretariat for public consultation in December 2020 is not sufficient in its current form to support this DR3(c) requirement. Stakeholder comments on this strategy have yet to be posted online, and nor has the 'zero draft' document been revised or re-circulated since 2020; we can supply our comments on that draft upon request. We urge further action on this item, we consider the development of a robust stakeholder engagement strategy a priority for the ISA.

Regarding **paragraph d**, we support alt 1 and the inclusion of adjacent coastal States in this study, and the drafting clarity provided by the alternative language. We would propose to add port States, given subparagraph (ii)'s reference to compliance and enforcement. It seems possible that a port State of disembarkation of a vessel involved in activities in the Area may not necessarily be an adjacent coastal State, but may be required to cooperate to enable effective compliance or enforcement action (e.g. verifying the amount of mineral ore off-loaded, or even detention of goods or personnel suspected of involvement in an offense).

Regarding **paragraph e**, we support the alternative language proposed as these changes will assist the ISA in encouraging and, as needed, requiring targeted collaborative studies aimed at important areas of uncertainty over environmental impacts that are common to all Contractors within a region and/or resource type. Regarding f, we support the proposed alternative, as the addition of 'sponsoring States' and deletion of 'best endeavours' would make the provision consistent with edits proposed to paragraphs a and e. For subparagraph i, we support the alternative language proposed here by the Deep Ocean Stewardship Initiative ('DOSI'), a network of scientists who bring first-hand knowledge of challenges and opportunities associated with data sharing and use. For subparagraph vi, we support the proposed amendment. Transfer of technology and capacity enhancement of developing States are cornerstones of Part XI of UNCLOS, and represent important non-monetary benefits that the ISA's wider membership may obtain from activities in the Area. We would also suggest consideration of whether additional provisions may be required to secure States' an optimal level of transfer of technology, capacity-building initiatives, joint scientific research, and other such types of non-monetary benefits from activities in the Area.

We support the proposed **paragraph h**, however we recommend a further contingency: that these Standards and Guidelines must be in place before any mineral production commences - Data and methodology standards across contracts are an important means of the ISA discharging its UNCLOS duties to promote, and coordinate and disseminate the results of, marine scientific research with respect to activities in the Area, and to ensure effective protection for the marine environment from activities within the Area. Standardized data templates and methodology will help provide clear expectations for Contractors, reassurance to stakeholders about levels of scientific rigour, and comparable data, usable not only for individual project management but also for regional environmental assessments. These data-sharing protocols should be in place before mineral production occurs to ensure that monitoring data is recorded and used appropriately.

Finally, as the ISA is untested as a regulator, and there are no well-established practices for performance and monitoring of deep-sea mining world-wide, we recommended that the ISA should establish compliance monitoring practices in provisional form and then test and refine them in detail during a pioneer phase of, for example, an early Contractor test-mine in a joint venture with the Enterprise (see proposed **paragraphs i and j**).