

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

***Informal Working Group - Environment***

*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](mailto: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.**

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**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 purpose of the Fund is to fund any measure to mitigate or compensate ~~the funding of or compensation for the implementation of any necessary measures designed to prevent, limit or remediate~~ designed to prevent, reduce and control and if appropriate and feasible, limit and remedy any damage to the Area, ~~the Marine Environment or coastal States~~ arising from activities in the Area and the restoration and rehabilitation of the Area when technically and economically feasible and ~~[supported by]~~ [in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques when] the costs of [such measures and efforts] ~~which~~ cannot be recovered from a Contractor or ~~s~~Sponsoring State, as the case may be.

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

We have one general comment, which relates to the interventions made by Ghana, Italy and the Deep Sea Conservation Coalition for this regulation. We similarly recall the submission of the African Group in 2019 entitled ‘Recommendations on Liability’, which contained several points pertinent to these Regulations about the Compensation Fund. For example, the African Group recommended that the Regulations should expressly set out the types of loss for which claims can be lodged, and the ways in which damage is to be assessed and quantified. The African Group further suggested that recoverable damage might include items such as: the cost of reinstatement, lost profits, the cost of reasonable measures to prevent further harm and payouts in lieu of actual reinstatement. The African Group’s submission requested that the ISA regulations be drafted so as to include measures to compensate for pure ecological loss and harm to the resources in the Area. We do not see these components incorporated in the text of the Regulations, and would suggest that this section 5 may be an appropriate place to add them.

Finally, we note the reference here is to compensation for ‘any damage’. It is our understanding – if we were to refer back to the African Group submission and to Italy’s intervention earlier- that this may include not only environmental damage, but also any damage to third party property or activities, or damage to human health, for example. The name ‘Environmental Compensation Fund’ however

suggests that only environmental damage can be compensated, and not other types of damage. We would appreciate clarification as to whether or not this is correct. Regardless, it would help avoid confusion or ambiguity to be more specific here about the types of damage for which the Fund can be used.