

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

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 of Working Group:

Institutional Matters

2. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 2*

*We prefer the alternative text proposed by Spain. From the November session it seems that proposal for the most part is preferred by the Council. As such, our comments and proposed edits in this submission are restricted to that text. If for some reason the original text is retained, we will in future submissions provide proposed edits to improve the functionality of that text.

4. 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 facilitators’ proposed amendments are reflected in **red**.

Our proposed amendments and our questions or comments regarding the facilitator’s remarks are indicated as in-line edits in **blue**. Where we propose deletions of the facilitator’s text this is shown **~~in strikethrough and bold~~**.

1. These **R**egulations, and any decision-making thereunder, shall be applied in conformity with the principles governing the Area embodied in Section 2 of the Part XI and in Part XII of the Convention.

2. ~~The exploitation activities in the Area~~The Area and its resources are the Common Heritage of Mankind and Exploitation shall be carried out for the benefit of mankind as a whole, taking into particular consideration the interests and needs of developing States ~~(Spain template)~~, for peaceful purposes and ensuring the effective protection of marine environment including biological diversity and ecological integrity.

3. Exploitation ~~activities in the Area~~ shall not commence until the legal framework intended for the effective protection and preservation of the Marine

Environment is adopted and scientific evidence demonstrates that ~~the~~ Exploitation ~~activities are is~~ conducted in such a manner as not to cause significant and harmful changes to the Marine Environment and its resources and to effectively protect and preserve the Marine Environment pursuant to article 145 and Part XII of UNCLOS.

4. The Regulations shall be applied in conformity with ~~According to~~ article 145 of the Convention, ~~the effective protection of the marine environment from the harmful effects which may arise from activities of exploitation, in accordance with~~ and the Authority's environmental policy, including ~~R~~regional ~~E~~environmental ~~M~~management ~~P~~plans, ~~is~~ which shall be based inter alia on the following principles and approaches:

- (i) Intergenerational equity.
- (ii) Precautionary approach.
- (iii) Ecosystem approach.
- (iv) Polluter pays principle
- (v) Access to data and information ~~relating to the protection and preservation of the Marine Environment.~~
- (vi) Accountability and transparency in decision-making; and
- (vii) Effective public participation.

4bis. The Authority's environmental policy shall be adopted prior to the consideration of an application for a Plan of Work.

5. These regulations shall be also applied in conformity with the policies relating to activities in the Area established in article 150 of the Convention and related principles contained in the Annex of the Agreement.

6. Member States, Sponsors, Contractors, and the Authority shall use best endeavours in their actions to uphold ~~ensure~~ public trust in, and the regulatory integrity of, the Authority, and shall not engage on decisions in which they have a ~~clear~~ conflict of interest.

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

We welcome the streamlining of DR 2 and reference to the Authority's environmental policy (in paragraph 4), subject to the understanding that the principles, approaches and policies referenced in this regulation are developed prior to the consideration of any Plan of Work (see proposed para. 4bis). Without further elaboration it is unclear how any of the items listed in this regulation will be achieved in practice.

We propose amending paragraph 4 to improve clarity and to more closely reflect paragraph 5, which seems to be the overall intent. Also, we propose that (v) should read 'access to information', without qualifier. While information about environmental protection is certainly a category of information that should be made publicly available by the ISA, it is not the only category. Freedom of information held by public bodies is an integral aspect of the fundamental human right of freedom of expression, recognized for decades in international human rights instruments, as well as in more recent commitments to which the ISA has committed itself, like Agenda 2030 (SDG 16). The ISA should adhere to human rights, as a matter of law and principle. And in practice, stakeholders are likely to be

justifiably interested in information held by the ISA that does not pertain directly to the protection of the marine environment, for example: details of different contracts issued, copies of ISA decisions and their rationale, contractor compliance records, volumes and types of ore mined, amounts of royalties received, use of those royalties etc.

Regarding paragraph 6, we suggest the deletion of the word 'clear'. Any conflict of interest should be avoided. The more detailed ISA Regulations (or subsidiary instruments) aimed to avoid conflicts of interest, could clarify specifically what constitutes a conflict of interest, to alleviate concerns about whether or when such a conflict arises or is 'clear'.