

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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:** Protection and Preservation of the Marine Environment
- 2. Name(s) of Delegation(s) making the proposal:** Australia
- 3. Please indicate the relevant provision to which the textual proposal refers.**

DR55alt - proposed amendments in green; black text and red text is from the Facilitator's fourth revised draft text circulated prior to the November 2023 Council meeting.

- 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.**

Regulation 55 Alt

Purpose of the Environmental Compensation Fund

The purpose of the Environmental Compensation Fund is to function as a 'last resort' compensation fund only. ~~has two purposes:~~

~~(a) — In the event that there is environmental damage caused by contractor activities that were not consented were not foreseen in the Plan of Work or that arise from a breach of any conditions of approval, then in accordance with the polluter pays principle the contractor shall bear liability for the financing of any measure to mitigate that environmental damage and shall also be liable for compensation to any person affected by that environmental damage, but if the contractor is unable to meet that liability in full and the Sponsoring State is not liable under Article 139 (2) of the Convention, then, as a last resort, the environmental compensation fund may be called upon.;~~ ~~a — (b) In the event that there is unforeseen environmental damage caused by contractor activities that were consented activities then the environmental liability fund shall be used to finance any measure to mitigate that environmental damage and compensate any person affected by that environmental damage.~~

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

Australia is comfortable with progressing negotiations on the basis of 55alt as we consider it is a more streamlined text.

Australia has proposed deleting (b). In accordance with the polluter pays principle, the Contractor shall be liable for all the costs associated with environmental damage resulting from their exploitation activities, except for very exceptional circumstances. On that basis, we do not think it is appropriate that the Environmental Compensation Fund should be used in the first instance to cover costs associated with 'unforeseen environmental damage' arising from consented activities – in the first instance, this liability should remain with the Contractor.

Australia has proposed streamlining (a) to clarify how, in our view, the Environmental Compensation Fund should function as a fund of last resort, and in what instances it can be accessed.

We have proposed removing 'consent' as we do not think this is the most appropriate way to reflect the fact that a Plan of Work may be approved on the understanding that *some* level of harm will occur. We have instead proposed the language of damage 'not foreseen in the Plan of Work or that arise from a breach of any conditions of approval' to make clear that any damage (including unforeseen damage arising from approved activities) will result in contractor liability, unless that damage was approved in the plan of work.

We have also inserted a reference to Article 139(2) of the Convention as we think recourse to the Environmental Compensation Fund should occur only if the Sponsoring State is otherwise not liable.

Australia further considers it may be more appropriate to have a standalone liability regulation which is cross-referred to in this regulation. This would allow discussions to progress separately regarding contractor liability, while allowing DR 55alt to establish that the Environmental Compensation Fund is to be used only when the Contractor cannot pay its liability. However, we welcome further views on this.