

**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.**

DR60(1bis) - 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.**

1. In adherence to the ~~precautionary~~ polluter-pays principle the Fund will consist of, but not be limited to, the following monies:

(a) The prescribed percentage or amount of fees paid ~~after approval of a plan of work and~~ prior to the commencement of ~~mining activities (Commercial Production) in the Area under an Exploitation Contract~~ by Contractors or the Enterprise to the Authority;

~~(a) alt. The requirements and modalities governing contributions to the Fund in accordance with regulation 56, including the establishment of the minimum size of the fund, and the modalities for replenishment of the fund upon disbursement.~~

(b) The prescribed percentage of any penalties paid by Contractors or the Enterprise to the Authority;

~~—(c) The prescribed percentage of any amounts recovered by the Authority by negotiation or as a result of legal proceedings in respect of a violation of the terms of an exploitation contract;~~

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

Australia suggests deleting (c) in this draft regulation.

In particular, we have proposed to delete the reference to penalties paid 'by negotiation.' In the event of a contractor violating terms of the contract, the penalties imposed should not

be at the discretion of a negotiating process; they should be defined penalties imposed by the Authority.

Australia further proposes deleting reference to legal proceedings as we consider that subparagraph (b) will already capture *all* penalties paid as a result of contract violation, including penalties ordered to be paid through legal proceedings.