

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29<sup>TH</sup> SESSION:  
COUNCIL - PART I**

*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](mailto:council@isa.org.jm).*

**1. Name of Working Group:**

Environment

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

Federal Republic of Germany

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

DR 55

**Red text** is in original draft; **blue text** indicates Germany's textual proposals

**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 [IWG ENV]**

**Purpose of the Environmental Compensation Fund**

1. The purpose of the Fund is to finance the implementation of any necessary measures designed to mitigate or compensate for any ~~unlawful~~ loss or damage to the ~~Marine Environment of the Area~~ or coastal states, or ~~damage caused to third parties~~ arising from ~~activities under an exploitation contract~~ ~~exploration~~ ~~Exploitation~~ ~~activities in the Area~~ when the costs of such measures ~~and efforts~~ cannot be recovered from a Contractor ~~and the Sponsoring State is not liable under Article 139 (2) of the Convention or Sponsoring State~~. This includes the ~~remediation restoration and rehabilitation of the Area~~ ~~Marine Environment (when the rehabilitation is technically and economically feasible)~~ ~~and~~ in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques ~~when the costs of such measures and efforts cannot be recovered from a Contractor or Sponsoring State, as the case may be for environmental damage outside of consented activity~~. Compensation can be used in cases when the restoration and rehabilitation are impossible. ~~shall include the costs for implementation of any necessary measures designed to prevent, reduce, mitigate, limit, and remediate any damage to the marine environment and its resources.~~

~~1. Alt. The purpose of the Fund is to finance compensation [and mitigation costs], which cannot be borne by the Contractor or Sponsoring State as the case may be, for environmental damage outside of consented activity.~~

2. Based on the **precautionary- polluter pays** principle the Contractor shall pay for any necessary measure to limit, remedy and compensate any ~~[unlawful]~~ damage to the Area arising from activities conducted under an their **mining-Exploitation** Contract activities.

~~[2. Alt. Based on the precautionary principle the contractor shall pay for necessary measures to limit, remedy and compensate damage to the Area arising from exploitation, outside of consented activity.]~~

~~[3. — In cases where the contractor' payment is insufficient to limit, remedy and compensate any damage to the Area arising from] [the mining activities] [Exploitation,] the compensation fund may be used.]~~

**[4. In cases where situations may arise, where a Contractor does not meet its liability in full while the Sponsoring State is not liable under Article 139 (2) of the Convention, the compensation fund may be used.]**

#### **Regulation 55 Alt. [IWG ENV]**

##### **Purpose of the Environmental Compensation Fund**

1. The Environmental Compensation Fund has two purposes:
  - ~~—(a) In the event that there is environmental damage caused by contractor activities that were not consented, 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, then, as a last resort, the environmental compensation fund may be called upon; and~~
  - ~~—(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.~~

#### **Regulation 55.Alt. 2**

##### **Purpose of the Environmental Compensation Fund**

1. Based on the polluter pays principle and as reflected in these Regulations, it is the responsibility of the Contractor to pay for any necessary measure to limit, mitigate, remedy and compensate any damage arising from the activities conducted under an Exploitation Contract.
2. In cases where situations may arise, where a Contractor does not meet its liability in full while the Sponsoring State is not liable under Article 139 (2) of the Convention, the compensation fund may be used as a last resort after exhausting all other possibilities.
3. The purpose of the Fund is to finance the implementation of any

necessary measures designed to mitigate or compensate for any loss or damage to the Marine Environment, coastal states, [or damage caused to third parties] arising from activities conducted under an Exploitation Contract. The Fund shall cover at least two situations:

- (a) where there is damage caused by contractor activities that were not consented; or
- (b) where there is unforeseen damage caused by contractor activities that were consented activities or where the Contractor acted negligently.

4. Compensation to any person affected by damage pursuant to paragraph 3 shall include the costs for implementation of any necessary measures designed to mitigate any damage to the marine environment and its resources.

5. The Fund shall be subject to periodic review, including the consideration of whether restoration has become technically and economically feasible and could be carried out in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques when the costs of such measures and efforts cannot be recovered from a Contractor or Sponsoring State, as the case may be.

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

- In September 2023, five states submitted textual proposals for DR 55, two of which preferred the then 55.ALT.1 and no state had asked for its deletion. Germany is therefore wondering why this alternative was deleted. Germany had made a number of textual proposals in September to merge the two alternative versions of DR 55, yet our proposals appear to have been left out of the latest drafting round. We therefore reinsert our proposal here as 55.Alt.2, with changes based on the discussions at the Oct/Nov session, and kindly ask for it to be reflected in the draft regulations. We have also inserted some key textual changes in DR 55 (original) though we stress that we suggest deleting the original and continue with the now proposed 55.Alt.2.
- DR 55Alt.2(3): The distinction between harm caused by non-consented activities and those caused by consented activities but exceeding consented levels is important. The latter speaks to eg exceeding thresholds while the former covers harm from non-permitted activities, which will likely not be covered by insurance policies.
- DR 55Alt.2(5): Germany notes that there is disagreement about whether or not to mention restoration and rehabilitation measures, given that neither of these are currently feasible. As a compromise, we suggest that the scope of the ECF could be reviewed periodically which would allow States to include restoration and rehabilitation measures if and when these become scientifically and economically feasible in the future.