

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

Protection and Preservation of the Marine Environment

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.

DR 55

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.

- **Red font** are proposed amendments by the Facilitator in this revised text.
- Our proposed amendments and our questions or comments regarding the facilitator’s remarks are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

Regulation 55 Alt.
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 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; 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.

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

We are generally supportive of the alternative text, but from the submissions and interventions, it seems that there is still not consensus on the purpose of this Fund. For example, in the original text it appears that some envisage damage other than environmental, while others do not; some envisage damage to third parties and coastal states, while others focus solely on damage to the Area; and, some envisage funds to be used for the entire mitigation hierarchy (including prevention), while others don't.

We are also now confused about whether States believe lawful harm, and/or unlawful harm should be included or not. For these reasons it is important that the text be very clear as to what the Fund can cover. Pew considers that the Fund should be available for as broad a category as possible, including any harm outside of the permitted impacts in the Plan of Work, and including remedial action designed to limit further damage, and wherever the harm occurs, but as a last resort, and when the contractor is not able to meet its liability in full and the Sponsoring State itself is not liable. For this reason, it is important that the regime includes a strict liability regime for contractors - so any harm that occurs outside what is permitted in the Plan of Work, is deemed 'unlawful'. This is what the polluter pays principle requires means.

While we agree that procedural detail can be located in a Standard (for example: about who can claim against the fund, by what process, and to what standard of proof and for what amount), we do not agree that the fundamental purpose, principle and scope of the Fund in paragraph 1 should be moved to a Standard. It needs to be retained in the Regulations, so that this aspect of the regime is clear at the high-level.