

**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:

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.

DR 3

Red text is in original draft; magenta text indicates Pew's new textual proposals or support for a proposal from a range of options

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.

(b) The Authority ~~and~~ sponsoring States, flag States, and port States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements;

(d) (iii) Facilitate access to sites and items that may fall outside the Authority's jurisdiction to be inspected under these Regulations for the purposes of Contractor compliance monitoring and enforcement.

(f) (i) Sharing, exchanging and assessing ~~environmental~~ data and information for ~~and about~~ the Area, including by use of data repositories and open-access databases;

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the annex to the Agreement, Contractors and members of the Authority shall enable access to ~~information, upon the request by the Secretary General~~ ~~[for the Council]~~, ~~upon the request of the Economic Planning Commission, or other appropriate organs of the Authority~~ to facilitate the Authority's preparation of studies on the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. ~~[The content of any such studies shall be in accordance with specific terms of reference and any relevant Standards, and taking account of Guidelines.]~~

(i) The Authority may issue reasonable requests to Contractors, the Enterprise, and member States to participate in joint research or test activities in accordance with directions issued by, and under the control of, the Authority, in order for the Authority to test proposed or adopted rules, regulations and procedures, as well as monitoring practices, and other institutional functioning.

(j) Contractors, the Enterprise, and member States shall cooperate with requests under paragraph (i).

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

Paragraph 3(b) seeks to bind flag States and port States. As we've observed before, these Regulations presumably would not bind a State that is not a member State of the ISA. This could cause an issue for inspections or information-gathering, given a flag State's exclusive jurisdiction over vessels on the high

seas. Consideration may be given to inserting a requirement in the Regulations for all vessels used in Exploitation activities to be registered with a flag State that is a member of the ISA (and preferably the sponsoring State, to enable the most streamlined approach to regulation and enforcement). Alternatively the ISA and/or the sponsoring State may need to explore bilateral agreements with non-ISA member flag States for the facilitation of DSM-related investigations into and on-board vessels used for activities in the Area, which may be cumbersome or ineffective. Article 153. of the Convention requires the ISA to exercise control over activities in the Area, and emphasizes that the ISA has the right to take measures to ensure compliance with its regulations and contracts, Under this power, the ISA could consider a requirement for bilateral agreements to be in place between the ISA and the relevant flag and port States to ensure a smooth and holistic compliance regime, before the issuance of any contracts by the ISA to contractors planning to use any non-member State flagged vessels or port States in operations under a contract. This would deal with the fact that this paragraph (3) has no binding effect outside of the ISA's membership.

DR3(d) appears to be the principal part of the Regulations that would cover the need for cooperation between the ISA and member States in the event that inspection or enforcement activities are required to take place under national jurisdiction e.g. facilities onland need to be inspected, or personnel onshore need to be questioned. The ISA does not have jurisdiction to conduct such activities within national jurisdiction without the permission and cooperation of the relevant State. This may be the sponsoring State, but may also be a port State, or other State in which the Contractor has physical presence or operations. As drafted, DR3 does not appear to cover this scenario very robustly and we would propose that the cooperation duties between the ISA and States are further bolstered in DR3(d), in order to clarify the above-described scenario of joint work on inspection and enforcement activity within national jurisdictions.

We query why sub-paragraph (f) (i) covers 'environmental' data and information only. We suggest that the word 'environmental' should be deleted, or 'and other' should be added after it. In our view, there may be other types of data that would benefit from wider dissemination e.g. economic, geological, technological. Indeed the header paragraph refers specifically to 'technology development agencies' and we recall also the many technology transfer provisions and requirements regarding scientific knowledge sharing (not limited to environmental data) that are contained in UNCLOS, but which are not well-reflected in the Regulations currently.

In para (g) we would also like to see a reference to the Economic Planning Commission here as the provision specifically speaks to responsibilities conferred by the Convention on the EPC. We do not support edits to dilute the obligation to enable access to information, and would therefore delete the phrase "use best endeavours to" and "confidential" in the first sentence.

We suggest new subparas (i) and (j) - The ISA is untested as a regulator, and there are no well-established practices for performance and monitoring of deep-sea mining world-wide. It is therefore recommended that the ISA should establish compliance monitoring practices in provisional form and then test and refine them in detail during a pioneer phase of, for example, an early Contractor test-mine in a joint venture with the Enterprise.

Source: White Paper, Dr. Kevin Murphy (Pew, 2020). Also please see: Mark Squillace. 2021. Best regulatory practice for deep seabed mining.