

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH SESSION:
COUNCIL - PART II**

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.im.

1. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

2. Please indicate the relevant provision to which the textual proposal refers.

53 bis

3. 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.

Proposal 1:

A Contractor shall take ~~[all the]~~ necessary ~~[and appropriate]~~ measures to protect and preserve the Marine Environment, ~~[including the and]~~ coastlines ~~[from harmful effects, in accordance with Article 145 of the Convention,]~~ by preventing, reducing and controlling pollution ~~[and other hazards, including marine litter and underwater noise,]~~ ~~[directly resulting]~~ from its activities in the Area. This is to be done ~~[pursuant to in accordance with]~~ its Environmental Management and Monitoring Plan, ~~[theand all]~~ relevant rRules, regulations and procedures of the Authority, the relevant ~~[applicable]~~ Regional Environmental Management Plan, ~~[and]~~ taking ~~[into]~~ account ~~[of]~~ the applicable Guidelines.

Proposal 2:

A Contractor shall take ~~[all the]~~ necessary ~~[and appropriate]~~ measures to protect and preserve the Marine Environment, ~~[including the and]~~ coastlines ~~[from harmful effects, in accordance with Article 145 of the Convention,]~~ by preventing, reducing and controlling pollution ~~[and other hazards, including marine litter, greenhouse gas emissions, and underwater noise,]~~ ~~[directly resulting]~~ from its activities in the Area. This is to be done:

- (a) ~~[pursuant to in accordance with]~~ its Environmental Management and Monitoring Plan, ~~[theand all]~~ relevant rRules, regulations and procedures of the Authority, the relevant ~~[applicable]~~ Regional Environmental Management Plan, ~~[and]~~ taking ~~[into]~~ account ~~[of]~~ the applicable Guidelines. ~~and~~
- (b) ~~By a Contractor using in its Exploitation activities only vessels that: are registered with flag States who have ratified the ‘MARPOL’ Convention (on prevention of marine pollution from ships) and the ‘London Convention and London Protocol’ (on the prevention of dumping of waste from ships) and whose current compliance with those instruments has been surveyed and certified. -~~

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

As mentioned by Norway during the July 2024 Council meeting, insofar as DR53(bis) relates to pollution caused by the Contractor’s Exploitation, we would expect such matters to be covered by the environmental parts of the Regulations and are somewhat unclear what this additional regulation specifically on pollution adds. UNCLOS requires the ISA to adopt RRP’s to prevent, reduce and control pollution. Transferring that obligation to Contractors via this regulation does not serve to operationalise it.

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Formattato: Paragrafo elenco, Destro 0.96 cm, Numerazione automatica + Livello:1 + Stile numerazione: a, b, c, ... + Comincia da:1 + Allineamento: A sinistra + Allinea a: 0.63 cm + Imposta un rientro di: 1.27 cm, Allineamento carattere: Linea di

We suggest a better approach would be for the Council to check that all aspects of Article 145 are properly covered in the regulations that cover the EIA, EIS, EMMP, EMS etc. (and to delete this DR53(bis) as redundant). In this regard, we recall that Article 145 is not solely focused on pollution, but also '*other hazards*', '*interference with the ecological balance of the marine environment*', '*protection and conservation of the natural resources of the Area*', and '*prevention of damage to the flora and fauna of the marine environment*'. We are not sure why pollution would be selected for special treatment out of that array of issues that require RRP's.

If this article is to be retained, in terms of the specific drafting, we recall that in the November 2023 session, there was significant support to retaining the wording '*...including marine litter and underwater noise*', (our notes show this proposal was supported by the following delegations: South Africa on behalf of the African Group, Canada, Germany, Bangladesh, Costa Rica, Italy, Spain, Brazil, Jamaica, Chile, Federated States of Micronesia, France, Ireland, USA).

If specific aspects of pollution (which may otherwise fall outside of attention) are to be listed here, we would also like to see greenhouse gas emissions included.

We query in DR53(bis) the use of the phrase '*directly resulting from its activities*'. This term is not used in Article 145 (which refers to '*...which may arise from such activities*'). Article 209 of UNCLOS refers simply to '*pollution of the marine environment from activities in the Area*'. There is no '*directly*' qualifier. We are concerned that introduction of this new term inappropriately narrows the duty and could give rise to unnecessary conflict over which impacts are direct and indirect – when the key issue is: both need to be controlled.

Lastly, it remains unclear to us how DR53(bis) on pollution control inter-relates with the pollution regime that covers usual shipping operations, rather than mining activities. For the avoidance of doubt, we would propose that DR53(bis) includes a new paragraph (4) to require a Contractor only to use vessels that are registered with States who have ratified the 'MARPOL' IMO Convention (on prevention of marine pollution from ships) and the 'London Convention and London Protocol' (on the prevention of dumping of waste from ships). Otherwise there may be a loophole where waste and pollution from the mining activity is prohibited in the ISA's regulations, but waste and pollution from the shipping operation is not. Inclusion of this new paragraph (4) gives the ISA an investigatory jurisdiction over maritime pollution associated with Exploitation activities that it would not otherwise have. This may be particularly important if waste streams from maritime operations and from mining operations are mixed.