

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29<sup>TH</sup> 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.jm](mailto:council@isa.org.jm).

**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.**

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**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.**

1. The Authority hereby establishes the Environmental Compensation Fund- (~~Referred-referred~~ to as “the ~~Fund~~ECF” ~~in the following for purposes of these Regulations~~).

2. The rules and procedures of the ~~Fund~~ECF shall be established by the Council on the recommendation of the Finance Committee before the [~~approval of a first Plan of Work for an Exploitation Contract beginning of Commercial Production~~] under these Regulations. [Those rules and procedures shall include, inter alia:

(a) ~~A mechanism for financing~~ ~~The requirements and modalities governing contributions to the funds~~-Fund in accordance with Regulation 56, including ~~modalities for replenishment of the ECF~~ upon disbursement;

(a) ~~bis~~ ~~The minimum size of the fund~~ECF;

(b) A description of how the ~~funds~~-ECF and any interest generated will be managed and by whom;

(c) ~~Modalities for administering claims against~~ ~~The process for accessing~~ the ~~funds~~ECF, ~~including determining entities eligible to access the ECF, which may include States, international organizations and private entities that have suffered damages, as well as the Authority~~;

(d) The type of damages and purposes eligible for claims against the ~~funds~~-ECF in accordance with Regulation 55;

(e) The standard of proof required for claims against the ~~funds~~ECF;

(f) ~~A policy on refunds of Contractor payments into the funds~~;

(g) A process for determining disbursements ~~or refunds~~ from the ~~funds~~ECF; and

(h) The promotion of the participation of affected persons or other Stakeholders in decisions about disbursement of ~~funds~~ECF.]

3. The Secretary-General shall, in consultation with the Finance Committee, within 90 Days of the end of a Calendar Year, prepare an independently audited statement of the income and expenditure of the ~~Fund~~ECF for ~~submission to the Assembly for their consideration, and to be made publicly available on the Authority’s website~~ ~~circulation to the members of the Authority~~.

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

With regards to DR54, we would like generally to reiterate various high-level comments made during the thematic discussion on the Environmental Compensation Fund: [https://www.isa.org.jm/wp-content/uploads/2024/05/Pew-Charitable-Trusts\\_Intervention-on-Environmental-Compensation-Fund\\_agenda-item-10-1.pdf](https://www.isa.org.jm/wp-content/uploads/2024/05/Pew-Charitable-Trusts_Intervention-on-Environmental-Compensation-Fund_agenda-item-10-1.pdf).

In terms of textual amendments, in paragraph (1), we do not understand the sentence that reads: ‘Referred to in as “the Fund” in the following’. This is not a complete sentence, and the meaning of ‘in the following’ is not clear. We guess this should read: “The Authority hereby establishes the Environmental Compensation Fund (referred

to as “the Fund” for the purposes of the remainder of this regulation).” If that is the case, then we suggest this term ‘the Fund’ should actually be used, whereas most of the rest of the regulation actually uses the term ‘the fund’ or ‘the funds’. We actually propose that it would be sensible to use the term ‘ECF’ instead to avoid confusion, as the ISA already holds a number of different funds (and is planning at least one more for benefit-sharing).

In relation to paragraph (2), we strongly support that the rules and procedures of the ECF need to be in place prior to the approval of the first Plan of Work. At the point of an application for Exploitation, the LTC and the Council need to assess the applicant’s financial capabilities to deliver on the Plan of Work. This requires that the LTC and the Council know what the financial requirements are and what aspects and amount would be covered by insurance at the point of application, and not after an application has been approved.

If the ISA develops these rules soon (perhaps simultaneously with these Regulations), much of the text proposed about them could be deleted. However, in the absence of those rules, we prefer these points to be retained in the Regulations.

In sub-paragraph (2)(a), “*financing*” may be the wrong term; and what is required is more than the mechanism – but the actual rules and procedures governing how the ECF is funded.

In sub-paragraph (2)(c), we are not sure that ‘the process for accessing funds’ is sufficiently clear and comprehensive. We also believe this should include a list of eligible claimant types.

With regards sub-paragraphs (2)(f) and (g), we query whether refunds should be made from the ECF. Our understanding is that the ECF is like another form of insurance – it is loss spreading – so payment is premised on probability that some accidents may occur, but all contribute to ensuring the loss is covered. If this is correct, then refunds should not be made available – as payment into the ECF is simply the cost of maintaining this insurance. (Insurers do not refund money once the insured ceases operations). In any event, in sub-paragraph (2)(g), the administration of claims against the fund should not be confused with refunds.

While we appreciate the intent of sub-paragraph (2)(h), we are not sure it makes sense as drafted. Stakeholders have an interest in, and should be consulted in, the establishment of the rules. But if the rules are clear then disbursements should be a matter between the person suffering damage and the ECF, not open to the views of other Stakeholders.

In relation to paragraph (3), we are not sure why the terminology used here is ‘*for circulation to the members of the Authority*’, and we also consider the use and management of the ECF to be a matter of public interest and so propose an amendment to ensure the statements are made publicly available.