

**TEMPLATE FOR SUBMISSION OF COMMENTS ON THE
GUIDANCE TO FACILITATE THE DEVELOPMENT OF
REGIONAL ENVIRONMENTAL MANAGEMENT PLANS ([ISBA/29/C/10](#))**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to: oemmr-secretariat@isa.org.jm

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

The Pew Charitable Trusts

2. Please provide general comments where applicable here:

We thank the Commission for their work on the draft standardized procedure for the development, review and approval of REMPs. Pew has long expressed the need and urgency for developing a standardized framework for the establishment of REMPs, had supported the 2019 Hamburg workshop on this important topic, and had strongly supported the submission made by Germany, Netherlands and Costa Rica in 2020, which arose as a result of that workshop and its wide participation.

We appreciate the opportunity to comment on this latest draft and would like to make the overarching comments:

- (1) We find the division of content between the Technical Guidance, and the Standardized Procedure and Template confusing and inconsistent. We suggest that this be reviewed.

To be effective, the **Standardized Procedure and Template** needs to set **binding requirements** for all persons involved in developing and implementing REMPs. The content of the document needs to accurately reflect that status, and this document should be agreed and adopted by the Council in order to give it appropriate force.

The Procedure and Template should start with a clear statement of its status and objective, and then contain requirements for REMP process and content that are mandatory. The Procedure and Template document should be phrased consistently in appropriately clear and enforceable terms (i.e. duties phrased as 'shall', with allocation to a specific party who can then be held accountable to deliver that duty). The Procedure and Template document needs editing to clarify more accurately the Council's specific policy that no application for a plan of work for exploitation can be assessed and decided upon, unless there is a REMP in place for the relevant region.

The **Technical Guidance** should be supplementary and subsidiary to the Standardized Procedure and Template. It can follow the same structure as the Standardized Procedure and Template (which it does not currently do faithfully), for each section providing explanatory wording, suggestions, guidance and/or sign-posting to assist in the process of REMP development and implementation. For example, we would expect the Technical Guidance to set out as exhaustively as possible a list of examples of other marine uses and types of cultural heritage that may be relevant to a REMP, with suggestions for where to find out more information about these, including contact details where appropriate. Duplication and inconsistency should be removed from the Technical Guidance document. The different processes and

reports required in developing a REMP should be clearly described, distinguished and rationalized. We find the Technical Guidance currently lacking in clarity e.g. we are unclear from the document:

- Who is expected to carry out each of the actions proposed?
- What is the difference in content and purpose between the Data Report (DR) and the Regional Environmental Characterisation document (REC)?
- How should consultations be run to make them 'meaningful'?
- What is envisioned when the documents speak to 'implementation of the REMP'?
- What is the process whereby a draft REMP is submitted to Council, and what are the repercussions if the Council either adopts, or rejects, that draft?

The Technical Guidance text should be a document adopted by the LTC, and as such should follow and not undermine the policy and decisions of the Council, should be phrased in recommendatory language, and should not seek to create new mandatory obligations e.g. upon States Parties (which would be ultra vires for the LTC).

(2) REMPs are not only tools for assessing environmental issues, but can also provide the ISA with broader intelligence to inform its whole mandate, including cooperation with other competent organisations, regard for other marine users, and protection of human rights, cultural heritage, coastal state's interests etc. This should be better reflected where the documents describe a REMP's **purpose**.

(3) To succeed, the widest possible engagement of relevant **stakeholders** should be aimed for by the ISA in the processes of developing and implementing REMPs. There may be States, communities, scientists, regional organizations, private sector, workers, civil society organizations, experts, industry associations, secretariats of international processes, etc. all with an interest in or knowledge about a particular ocean region, but who are not previously closely engaged with the ISA and its activities. We are concerned that the documents as drafted do not reflect a sufficiently wide-net approach, but instead tend rather to restrict and delay stakeholder opportunity to participate. The Pew Charitable Trusts has raised many times concern about the lack of standardized stakeholder engagement and public participation policy and procedure at the ISA. These documents present an opportunity partially to fill a gap (in relation to REMPs at least). We would therefore like to see the Standardized Procedure and Template set out inclusive procedures to enable:

- (i) At the outset, broad outreach requirements (specifying a generous timeframe and media to be used – that seeks to reach an audience beyond publication of notice on the ISA's own website) to inform the public of a planned REMP development or revision. This should enable self-identification of interested parties.
- (ii) Openness and inclusive methods to allow the ISA to receive comments and contributions throughout the process, from any source.
- (iii) A clear obligation for the LTC to publish and respond to substantive consultation comments received, including by way of a summary in its recommendation to Council - and that should also note any dissenting views.
- (iv) A way for persons with a grievance about matters of procedure or substance related to REMP development or implementation to raise those concerns without victimization, via an accountable and independent channel.

A list of identified stakeholders with interest in a REMP should be included within the REMP itself, for clarity and for reference in the event of future consultation and revision. We also suggest that the documents should identify any differences recognized in the procedure between the roles of rights-holders, interest-holders and knowledge-holders.

(4) The ISA, in the interests of transparency and accountability, should develop and publish its procedure and criteria for **expert selection**. This is a general and cross cutting point about how independent experts are selected more generally in the work of the ISA. If such a policy is adopted, then it can be cross-referred to and relied upon in the Standardized Procedure document. In the absence of an institution wide policy on expert selection, the REMP documents themselves will need to include such matters. The Standardized Procedure should also explicitly address how potential conflicts of interest should be managed. These points are important to ensure **due process** in the development and implementation of the REMPs. In our view, coordination with other regional and international organizations could be better prioritized and formalized in the Standardized Procedure. Finally, the categories of data that can or must be considered in developing and implementing a REMP should not be limited. This should apply as well to the to the early review process for an existing REMP – relevant information from any source should be eligible.

(5) Neither the Standardized Procedure document nor the Technical Guidance name who is responsible for **implementation** of the requirements and designations of the REMP. Protected areas are only meaningful if they are monitored and their terms enforced. Unless the ISA decides how such sites are to be managed and by whom (and at who's expense), the environmentally protective purpose of such sites will be undermined, the marine environment will be at greater risk, and the ISA will fall short of its obligations under Article 145 UNCLOS. This is a crucial substantive policy point that we consider needs addressing before the REMP documents can be finalized.