

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH
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 of Working Group:

President's Text

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 30

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.

1. The Contractor shall ensure at all times that:

(a) All vessels and Installations **and equipment** operating and engaged in Exploitation activities are in good repair, in a safe and sound condition ~~[in accordance with the requirements, specifications and preventive or corrective maintenance plans of the respective manufacturers,]~~ and adequately ~~crewed~~**manned** and insured, ~~[display navigation lights and shapes as per Collision Regulations]~~ and comply with paragraphs 2 and 3 below; and

(b) All vessels and Installations, **including crewed submersibles**, employed in Exploitation activities have an appropriate class designation and shall remain in class for the duration of the exploitation contract.

(c) **The Health and Safety Plan and Maritime Security Plan Annexed to the Plan of Work are kept up-to-date and effectively implemented.**

2. The Contractor shall ensure ~~[via periodic assessment by an independent entity as may be required]~~ compliance with the **relevant applicable** international rules and standards established by competent international organizations or general diplomatic conferences concerning the safety of life at sea, the pollution of the Marine Environment by vessels, the prevention of collisions at sea, [the training of seafarers,] [maritime labour conditions, ~~as adopted by the Maritime Labour Convention]~~ and the treatment of crew members, as well as **the Rules of the Authority [any] rules, regulations and procedures [and Standards adopted from time to time by the Council relating to] [of the Authority on] these matters.**

2 bis. For the purposes of paragraph 2, international maritime safety and navigational rules shall apply to all ships on all voyages engaged in activities in the Area.

5. The Contractor shall ensure that:

(a) All of its personnel, before assuming their duties, have the necessary experience, training and qualifications **and safety equipment** and are able to conduct their duties safely, competently and in compliance with the Rules of the Authority and the terms of the exploitation contract;

(b) Implementation of the Environmental Plans, and the Health and Safety Plan and Maritime Security Plan shall include awareness-raising programmes for personnel about the duties arising from those plans, and a programme ~~An occupational health, safety and environmental awareness plan is put in place~~ to inform all personnel engaged in Exploitation activities as to the occupational and environmental risks which may result from their work and the manner in which such risks are to be dealt with; and

This DR30(5)(b) appears to introduce a new plan ('occupational health, safety and environmental awareness plan') without specific details and which seems duplicative of the plans that are already required by these Regulations. It would be better to refer to existing plans here instead i.e. the Environmental Plans, the Health and Safety Plan, and the Maritime Security Plan.

(c) Records of the experience, training and qualifications of all of its personnel with data disaggregated by gender are kept and made available to the Secretary-General upon request.

In sub-paragraph (c), we suggest that the data should be disaggregated by gender. Mining is renowned as one of the worst sectors globally for gender diversity. In adopting SDG 5, States agreed to work to 'achieve gender equality and empower all women and girls' (in all sectors). Taking informed decisions, and tracking success towards that goal is difficult if gender-disaggregated data are not available.

Regulation 30 bis.

Human health and safety management system

¶1. When conducting its operations, a Contractor shall [develop], implement and maintain a safety management system, taking account of the relevant Guidelines.

2. A Contractor's safety management system shall:

- (a) Be capable of delivering site-specific safety objectives and meeting performance requirements specified in the Health and Safety Plan and Maritime Security Plan;
- (b) Cover occupational health and safety and process safety, including with regards the selection or design of assets, facilities, equipment and materials;
- (c) Permit effective reporting to the Authority in connection with safety performance;
- (d) Be independently verified annually by an internationally recognized provider of verification services acceptable to the Authority, in accordance with relevant Standards;
- (e) Promote inclusivity and gender equality; and
- (f) Be in accordance with Good Industry Practice and internationally recognised standards.

3. A proposed change to a Contractor's safety management system shall be treated the same as a modification of a Plan of Work, pursuant to regulation 57 mutatis mutandi.

4. Compliance with this Regulation is a fundamental term of the contract, for the purposes of Regulation 103.

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

In para 1, there is a lack of reference to the Contractor's Health and Safety Plan and Maritime Security Plan here, or indeed almost anywhere else in the Regulations, seems an unhelpful omission. We suggest these Plans be referenced here, with a specific obligation to maintain and implement the Plans.

We propose some small edits in para 2 to ensure DR30 is comprehensive in its coverage. So we suggest adding the term 'equipment' (alongside vessels and installations) as well as a requirement for insurance, into sub-paragraph (a), and adding 'crewed submersibles' into sub-paragraph 1(b).

The Regulations rely upon existing (or future) international standards for the protection of human life adopted by other international organizations, rather than envisaging the ISA developing its own. This makes sense given the comprehensive and continually-updated body of regulations already adopted by IMO and ILO.

But we propose amendment of ‘applicable’ to ‘relevant’ in paragraph (2), because international rules may be ‘applicable’ to State parties, but not other Contractor entities.

It may however be rather unfair to require each Contractor to judge for themselves which maritime rules may or may not be relevant or applicable. As CR and others said, it does not seem practicable to list all relevant instruments here, and nor does it seem helpful to pick out just one individual treaty to name. This would therefore seem a good subject matter for which the ISA (perhaps in partnership with other competent agencies) can develop Standards and Guidelines. For this reason, we do not agree with the deletion of reference to Standards.

We note that paragraph (2) does not cross-reference DR30(3), which recognises that these international rules are usually applied to individual ships and installations via national laws of the flag State, and wonder how this will operate in practice; would certification from a flag State who has ratified relevant conventions be sufficient to evidence compliance under this DR30(2), or would additional independent assessment still be required (as the regulation’s current drafting suggests)?

The ISA’s Technical Study 25 noted that there may be a loop-hole whereby ships that depart and return to the same port are classed as conducting domestic voyages, and thus evade coverage by international convention rules. Hence we propose a new DR30(2 bis) to cover this point.

DR30(5)(b) appears to introduce a new plan (‘occupational health, safety and environmental awareness plan’) without specific details and which seems duplicative of the plans that are already required by these Regulations. It would be better to refer to existing plans here instead i.e. the Environmental Plans, the Health and Safety Plan, and the Maritime Security Plan.

In sub-paragraph (c), we suggest that the data should be disaggregated by gender. Mining is renowned as one of the worst sectors globally for gender diversity. In adopting SDG 5, States agreed to work to ‘achieve gender equality and empower all women and girls’ (in all sectors). Taking informed decisions, and tracking success towards that goal is difficult if gender-disaggregated data are not available.

We propose that paragraph (6) be moved to a standalone regulation entitled ‘Human health and safety management’, and some additional provisions are added to provide more detailed requirements. As currently drafted, human health and safety appears inappropriately de-prioritised in these regulations. We propose three additional new paragraphs to set out the objectives and minimum standards for the safety management system, as well as implications for amendment of the system or failure to comply. This draws on the language used in the Regulations’ requirement for an Environmental Management System (DR46). We consider this additional detail is needed in the Regulations for the ISA to be meeting its duty to take necessary measures to ensure effective protection of human life [UNCLOS Article 146].