

**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.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.

Draft regulation 33

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 Contractor shall ~~suspend Exploitations activities not proceed or continue with Exploitation and follow the procedures set forth in regulation 29bis~~ if it is reasonably foreseeable ~~[or likely]~~ that proceeding or continuing would cause or contribute to an Incident, ~~or reduce~~ or prevent the effective management of such Incident.
~~Ibis. A Contractor shall maintain on board any mining vessel or Installation an Incident Register.~~
2. The Contractor shall, upon becoming aware of an Incident:
- (a) Notify its Sponsoring State ~~or States, States adjacent to the contract area likely to be affected~~ and the Secretary-General ~~[without undue delay] but no later than 24 hours [at the earliest time possible immediately, but no later than 24 hours from the moment the Contractor becomes aware of the Incident;~~
- ~~[(a).Alt. Notify its Sponsoring State or States, [relevant adjacent Coastal States] [States adjacent to the contract area likely to be affected] and the Secretary General immediately, as soon as reasonably practicable but no later than 24 hours from the time the incident occurred;]~~
- (...)
- (e) Record the Incident in the Incidents Register, ~~which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under Regulation 34~~

Formatted: Font: Not Italic

Formatted: Normal (Web)

Schedule

Incident – we recommend pulling the language from the referenced document in (a) and including it in the definition or including it in an Annex/appendix or Standard which is then referenced in the Schedule.

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

As a general point relevant to this regulation DR33, and as mentioned by the interim director general of the Enterprise, we note that the definition of ‘Incident’ in the Schedule to the Regulations refers to ‘a marine incident or a marine casualty as defined in the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code, effective 1 January 2010)’. While we see the efficacy of cross-referring to existing documents, it is particularly important that Contractors are clear what is an Incident, and what is not, for the purposes of ensuring an appropriate response. We wonder if this clarity may be better achieved by including a full definition for ‘Incident’ in the Regulations, rather than requiring cross-reference to another source document hosted by a third-party. If the definition of ‘Incident’ in the

Schedule to the Regulations were to list out in full the definitions from the Casualty Investigation Code, this may also reveal gaps in the context of these Regulations. For example, we note that the Casualty Investigation Code definitions, refer to events that have occurred '*directly in connection with the operations of a ship*'. This may exclude events that have occurred in connection with deep seabed mining operations (which are distinct in law from the operations of a ship) e.g. the definition may exclude from its scope: collector vessels on the seafloor, cables or riser pipes in the water column, or shipboard machinery used for the collection, treatment or ship-to-ship transfer of minerals.

Paragraph (1) of DR33 requires the Contractor to '*not proceed or continue with Exploitation*'. We query whether this is a 'suspension' and if so, why that terminology has not been used here, where it is used in several other Regulations? Indeed, we note that in DR28, a Contractor must suspend production where necessary to protect the marine environment, or human health and safety. DR28 then sets out a process quite different from that in this DR33. It is possible that the triggers to suspensions described in DR28, would also constitute an 'Incident' thus triggering DR33. It seems conflicting and duplicative to have two separate and different processes apply to the same trigger event. We therefore suggest these two provisions be aligned and streamlined. They should also both refer to new DR29(bis) ('Procedure for suspensions in Exploitation activities'), so that clear and consistent procedures are used throughout the Regulations any time a suspension of Exploitation is envisaged.

Re (2)(a), as mentioned by Germany and UK we recommend a clear deadline for reporting an incident. Also, the end of (2)(a) can be deleted as already included in the chapeau.

In paragraph (2)(d), we wonder if this should include a reasonableness parameter, to include a degree of proportionality in the provision, balancing other relevant interests and issues and industry practices, and not relying solely on the Contractor doing what they consider necessary to salvage the situation from their own perspective. This would read: '*all other measures necessary and reasonable in the circumstances*'.

In paragraph 2(e), we agree with the UK the wording describing the Incidents Register can be deleted, as it is a defined term in the Schedule, where the detail is more appropriately located. However, we note that between this DR33 and the Schedule definition of 'Incidents Register' there is a presumption that the Contractor will hold such a register, but there is not a clear and specific duty that they must do so. We suggest a new paragraph DR33(1)bis to this effect.