

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

Black font, **red font**, and grey text-boxes are replicated from the Draft Regulations text.

Blue font represents commentary or edits proposed by The Pew Charitable Trusts.

Regulation 30

Safety, labour and health standards

1. The Contractor shall ensure at all times that:

(a) All vessels, crewed submersibles and Installations 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], and comply with paragraphs 2 and 3 below; and

(b) All vessels, crewed submersibles and Installations [engaged] 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 compliance with the [applicable] [relevant] [mandatory] 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 and the treatment of crew members, as well as [the rules, regulations and procedures of the Authority on these matters.]

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

3. In addition, Contractors shall:

(a) Comply with the relevant national laws relating to vessel standards and crew safety of their flag State in the case of vessels, or their Sponsoring State or States in the case of Installations; and

(b) Comply with the national laws of its Sponsoring State or States in relation to any matters that fall outside of the jurisdiction of the flag State, such as worker rights for non-crew members and human health and safety that pertains to the mining process rather than to ship operation.

4. The Contractor shall provide copies of valid certificates required under relevant international shipping conventions to the Authority upon request.

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, regulations and procedures 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] 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
- (c) Records of the experience, training and qualifications of all of its personnel are kept and made available to the Secretary-General upon request.

Comments

- During the first part of the twenty-ninth session, it was suggested that reference should be made to “*crewed submersibles*” in order to clarify that it also falls under draft regulation 30.
- Several delegations and observers supported the insertion of paragraph 1(c). It has been suggested to delete the reference to the Annex in paragraph 1(c) since the Health and Safety Plan and Maritime Security Plan are separate plans.
- It has been suggested to replace “*applicable*” with “*relevant*” in paragraph 2, as international rules may be applicable to state parties but no other contractor entities.
- It has been suggested to delete the reference to Environmental Plans in paragraph 5(b) since the Environmental Plans do not cover safety, labour and health standards.
- Further discussions might be needed in relation to the interrelations between different relevant laws and the mandates of relevant international organizations in this respect. Reference is made to the ISA Technical Study number 25.

We generally agree with the comments highlighted in the President’s text box, also the edits made to DR 30 in this version.

We support retention of **paragraph (1)(c)**. The Contractor’s Health and Safety Plan and Maritime Security Plan are not to our knowledge substantively referenced elsewhere in the Regulations, and as such we believe that the reference to these plans and specific obligation to maintain and implement the Plans is warranted here.

Regarding paragraph (2), we would welcome **development of Standards and Guidelines by the ISA (in partnership with other competent agencies) to provide guidance on what maritime rules are relevant**, for the avoidance of doubt and to make this regulation appropriately enforceable. As currently drafted it seems that the Regulations may allow a Contractor to use vessels flagged to a State that is not signatory to maritime conventions on pollution, dumping, or labour conditions, and paragraph (2) does not in our opinion adequately plug that gap.

In this regard, we note that paragraph (2) does not expressly cross-refer to paragraph (3), which recognises that such international rules are usually applied to individual ships and installations via national laws of the flag State. We wonder how this paragraph (3) 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 e.g. paragraph (4) suggests)? We would be supportive for the Council in the regulations to **require Contractors only to use vessels that are flagged to registries of States who have ratified the relevant treaties**. In which case paragraph (2) may no longer be required, as the regulations could rely on flag State laws and implementation.

We hope that Pew’s 2024 Code Project study on the jurisdictional overlap between the ISA and shipping regimes may be helpful to delegates in their consideration of this DR30: <https://www.pewtrusts.org/-/media/assets/2024/03/code-project---enforcement-of-deep-sea-mining-regulations-at-sea.pdf> The paper also makes the recommendation for further work by the Council to explore the inter-relations between shipping law and the ISA’s regime for the Area, and the implications in law and in practice, to legislate to close gaps and avoid overlaps in the Regulations.

Lastly, in sub-paragraph (5)(c), we suggest that the **data should be disaggregated by gender**. Mining is renowned as one of the worst sectors globally for gender diversity, owing to deep structural inequalities (See e.g. IGF’s 2023 report:

<https://www.iisd.org/system/files/2023-04/women-mine-of-the-future-global-report.pdf>). In adopting SDG5, States agreed to work to '*achieve gender equality and empower all women and girls*' in all sectors. The SDGs also aim to address current 'gaping inequalities' evident in science, technology, engineering, and mathematics (STEM) employment. Taking informed decisions and tracking success towards that goal is difficult if gender-disaggregated data are not available (<https://sdg-action.org/data-on-gender-seeing-the-true-picture/>).