

The Pew Charitable Trusts Intervention on Regional Environmental Management Plans

We note there are mixed views on the legal nature of REMPs and whether and how REMPs and their content can be given binding effect. It seems to us that this open question still needs to be addressed before consensus can be reached on questions you have presented to us today.

We agree with all delegations who note the importance of REMPs but wonder if wholesale statements that REMPs are legally binding can be correct. If you look, for example, at the CCZ REMP, we think there are at least three different types of content.

1. Content that should be made directly legally binding on contractors (e.g. management objectives for contract areas, protection of APEIs).
2. Content that should be reflected in the contractors' own EMMP (e.g. visions, goals, aims, guiding principles). And
3. Content that clearly is not intended to have binding quality or relate to contractor activities (e.g. background to the REMP's development, or historic information about seabed minerals).

Given the mixed nature of REMP content, we suggest that the appropriate approach for the Council is to adopt REMPs as policy documents, identify the specific parts that need to be implemented and enforced, and then take steps to make those parts legally binding, by referencing or incorporating them in other instruments with relevant legal status and effect - such as the Exploitation Regulations.

For example, and with regards to the two questions that have been posed in your note, in our view the Environmental Management and Monitoring Plans (EMMPs) required for each Contractor should align with the objectives and measures identified in the applicable REMP and this should be an express requirement placed upon contractors in the Regulations.

The Contractor should also be required in the EMMP to provide specific plans to implement the objectives and measures identified in the REMP. Such measures may include spatial or temporal conservation measures, like the APEIs included in the Clarion Clipperton Zone.

The draft Regulations establish that an EMMP is a part of a Plan of Work, and a Contractor is contractually required to implement the Plan of Work. This means that aspects of a REMP that are referenced or adopted in an individual project's EMMP are therefore legally binding on the Contractor, as a condition of the contract and, critically, will impose legal consequences for not adhering to REMPs by way of its Plan of Work. So in this way, relevant aspects of REMPs are given necessary legal force.

Conversely, Madame Facilitator, noting the reference to the Environmental Management System or EMS in your questions, we would just highlight that our understanding of the EMS is that this is a series of organisational processes and practices designed to implement the EMMP. It puts requirements into practice, it does not set them. As such, for the purposes of this example, the focus on giving legal effect to the REMP should be on the EMMP and not the EMS.

We have written a short paper on the issue of which parts of REMPs may need to be given legal effect and how Council can accomplish this and will re-submit this after the meeting. We are happy to work with delegations intersessionally on this issue.

We do note that pulling together a comprehensive list of elements to address in the regulations may be difficult without a standardized REMP template as mentioned by Germany and Costa Rica, so we look forward to seeing that proposal from the LTC to Council in July and making the necessary adjustments.

Thank you.