

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.

Annex III bis Scoping Report

An ~~[environmental Impact Assessment]~~ Scoping Report shall include the following:

- (a) A brief description of the proposed Exploitation activities: ~~[and any ancillary features]~~
- (b) A description and overview of tentative timelines and deadlines for the proposed environmental baseline studies and Environmental Impact Assessment conducted under the Exploration ~~C~~contract and any associated activities;
- (c) A description of what is known about the environmental setting, including ~~[any]~~ Underwater Cultural Heritage, for the project (Contract Area and regional setting);
- (d) A description of data gaps, potential data gaps or data with a large uncertainty associated with it for the project, [including environmental baseline data, and a plan describing the methodology for collecting and analyzing that information prior to commencement of Exploitation activities and to inform the Environmental Impact Assessment];
- (e) A summary of existing environmental baseline studies, and, where available, relevant traditional knowledge of indigenous peoples and local communities;
- (f) A description of the technical, spatial and temporal boundaries for the Environmental Impact Assessment;
- (g) A ~~[brief]~~ description of the socioeconomic and sociocultural aspects of the project [including sociocultural uses of the Mining Area (e.g., traditional navigation routes, migratory paths of culturally significant marine species, sacred sites and waters associated with ritual or ceremonial activities of Indigenous Peoples and local communities)];
- (h) Any assumptions ~~and on~~ how they are being addressed, and assessment of their implications to the Environmental Risk Assessment findings;
- (i) A preliminary impact analysis which categorizes the important issues into highrisk, medium-risk and low-risk for the Environmental Impact Assessment to address and evaluates the need for further information, taking into account the Environmental Risk Assessment; [which includes:
 - (i) The identification of potential hazards;
 - (ii) The environmental consequence for each identified potential impact(s) (the magnitude of the impact(s), the duration of the impacts, and the receptor characteristics), and the likelihood of the consequence occurring;

(iii) A description of the cumulative effects of the project, combined with other authorized, ~~[anticipated, or expected]~~ activities, and actions, or natural phenomena;

(iv) The confidence levels of experts, in order to account for uncertainty and a precautionary approach; and

(v) A description of the methodology employed in the Environmental Risk Assessment.]

(j) A preliminary Environmental Risk Assessment;

(k) A description of the results of the Environmental Risk Assessment, including identification of high priority risks for local and regional ecosystem functioning over short and long term, requiring particular focus in the subsequent impact assessment phase of the Environmental Impact Assessment;

(l) A ~~[preliminary Stakeholder]~~ list ~~[of potentially directly affected that proactively identifies likely]~~ [key] Stakeholders, ~~[and States within the scope of Regulation 93 ter]~~ and ~~[an indicative]~~ schedule and methodology for engagement with ~~[such key]~~ Stakeholders ~~[and States during throughout]~~ the Environmental Impact Assessment ~~[process and development of the Environmental Impact Statement]~~, taking into account ~~[to not to publish privacy concerns related to the publication of]~~ personal information of identified Stakeholders;

(m) A report of [any written] consultations undertaken during scoping;

(n) A consideration of reasonable alternative means of carrying out the project that will be examined in detail ~~[as in]~~ the Environmental Impact Assessment [proceeds], including a no-action alternative, and any others that have [not] been ~~[not]~~ carried forward for further analysis at this stage, and the reasons for that selection;

(n) bis An explanation for how the activities and studies planned for the Environmental Impact Assessment will be sufficient to determine likely environmental impacts, and sufficient to propose mitigation and management strategies and monitoring methodology; and

~~(o) A draft Terms of Reference for the Environmental Impact Assessment, which identifies the activities and studies planned for the [subsequent impact assessment stage of the] Environmental Impact Assessment[, and any additional baseline data that will be required];~~

~~(p) An explanation for how the activities and studies planned for the Environmental Impact Assessment will be sufficient to determine likely environmental impacts, and to propose Mitigation and management strategies and monitoring methodology; and~~

~~(q) A note describing and explaining any divergence from [relevant applicable Standards or [ISA] Guidelines [of the Authority].~~

We support this Annex III bis and its function to set minimum requirements for an EIA Scoping Report. We suggest that Annex III bis should be expressly referenced in DR47bis (above) to bring it into effect. If a Standard is developed in relation to the Scoping Report, then some of this content could be moved to that document (e.g. paragraph (i)).

In paragraph (c), we suggest the inclusion of “*human remains and/or*” in front of Underwater Cultural Heritage, for consistency and as suggested by the IWG on UCH.

In paragraph (L) (as also noted in our commentary above on DR47bis), we think the requirement relating to Stakeholder identification should be two-tiered: (i) identifying Stakeholders, and (ii) identifying a sub-category who are deemed to

be ‘potentially directly affected’. This is based on our understanding that all Stakeholders will receive consultation opportunities before the EIA is completed, but the ‘potentially directly affected’ Stakeholders will receive additional engagement by way of proactive outreach and earlier and continuous consultation throughout the EIA process.

In this regard, it may be helpful for the ISA to define or provide Standards and Guidelines for what constitutes a ‘potentially directly affected Stakeholder’ which we would recommend should err on the side of inclusivity.

For the avoidance of doubt, if we are incorrect in our understanding that ‘potentially directly affected Stakeholders’ would receive additional engagement to other consultations that will take place with all Stakeholders; and if the insertion of the term ‘potentially directly affected’ is intended to limit the consultation requirements for all Stakeholders, then we strongly oppose it.

We seek clarity as to why paragraphs (p) and (q) have been deleted from Annex III bis since the last version. We prefer their retention. Paragraph (p) provides an opportunity for the applicant to set out why the EIA is designed as proposed (which is the specific purpose of the scoping report). Paragraph (q) should refer to Guidelines only (not Standards). By requiring applicants to report divergence from Guidelines, it enables the LTC and Council to identify more easily potential issues that may need particular regulatory consideration with an application, as well as areas where operational practice may have advanced beyond the ISA’s own recommendations (and can point to a need to review the Guidelines).