

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 102 bis

Ship notification, electronic monitoring and data reporting

1. All Installations, ships and mining collectors engaged in Exploitation activities under the Exploitation Contract shall be fitted with an electronic monitoring [and tracking] system, which shall record [continuously and], where technically feasible in real time, inter alia, the date, time and position of all Exploitation activities, and environmental data. [The electronic monitoring system shall also be capable of detecting and recording any unauthorized activities.] The details and frequency of reporting shall be in accordance with the Standards and taking into consideration the Guidelines.
2. All~~The~~ Installations, ships, ~~and~~ mining collectors [and other service operating units] shall be fitted with a satellite tracking system to enable identification of each ship and determination of its position, navigation status, course and speed. [This system shall also include Redundancy Measures to ensure continuous tracking in case of primary system failure]. The detail and frequency of reporting shall be in accordance with the Standards and taking into consideration the Guidelines.
3. The Compliance Committee shall issue a Compliance ~~N~~otice under Regulation 103 to a Contractor, where there is reasonable evidence to suggest based on the data transmitted to the Authority that unapproved Exploitation activities have occurred or are occurring. [The Contractor shall be required to provide a detailed explanation and corrective action plan within 7 Days].
4. All data received and transmitted to the Authority under this Regulation shall be transmitted to the Sponsoring State or States.

Comment

It has been suggested to place this draft regulation elsewhere since it seems to focus on contractual and environmental obligations of the Contractor. It has been suggested to place the draft regulation in part three concerning rights and obligations of Contractors. This should be further discussed and resolved.

We agree with moving this DR102bis to Part II (with paragraph (3) deleted, as below), because it establishes Contractor obligations, not ISA ICE procedures.

We understood there had been a previous decision to remove environmental monitoring aspects out of this regulation (into the environmental monitoring regulations). But the reference in paragraph (1) to 'environmental data' still conflates the two. It might be helpful for the Council to check **shared understanding of the scope and purpose** of this DR102bis (and what is do-able in practice), to inform drafting. Our understanding is that neither of the systems in DR102bis really functions to support environmental monitoring.

- The **electronic monitoring system** (paragraph 1) could include video cameras, sensors on equipment, computers that record equipment's movements with timestamps etc. As such the footage and data collected

could help inform the ISA's compliance monitoring, including e.g. volume of ore offloaded to a barge, volume of wastewater discharged etc.

- The **satellite monitoring system** (paragraph 2) tracks a vessel's position using GPS signals relayed through satellites, providing real-time location data, including course and speed. As such the data could help inform the ISA's overall regional management, including safety for other marine users.

We would welcome clarification how DR102bis' requirement for an **electronic monitoring system inter-relates to the Environmental Management System** required by DR 50 ter. Would one electronic monitoring system for a whole operation comply with both regulations, or is every installation, ship and mining collector is required to have their own separate e-monitoring system, which is separate again from the company's Environmental Management System?

Paragraph (2) should require that the satellite tracking system is always turned on and transmitting (as raised in interventions made by Bangladesh and Ireland in the July 2024 session). In drafting terms, the second reference to 'ship' in the paragraph seems to exclude installations and collectors, which we do not think is the intention. We are unsure why '*Redundancy Measures*' is capitalised (and think the word 'redundancy' here may – ironically - be redundant!) We would like to see stipulation also that the **satellite data from Contractors should be made publicly available**.

Paragraph (3) should be deleted. Unapproved Exploitation activities are already a breach of the regulations and the Contract, triggering DR103, without it needing to be separately prescribed here. And the CC should act any time (using their discretion as to the appropriate response) they believe there is contractor non-compliance not only where it derives from this specific data.

We are unsure that **paragraph (4)** is necessary. Sponsoring States can place their own reporting requirements upon their Contractors via national laws and measures.