September 2025

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 11

Publication and review of the Environmental Plans

[Alt. Publication, notification, and review of the Application]

1. The Secretary-General shall, within 7 Days after determining that an application for the approval of a Plan of Work is ready to progress pursuant to Regulation 10, consult with all States and Stakeholders in accordance with regulation 93bis on the application. The Secretary-General shall request the Commission to provide its comments on the Environmental Plans and the non-confidential parts of the Test Mining study within the consultation period set under 93bis. Based on the assessment of the Commission, if necessary, the Secretary-General shall establish an independent review team, making use of the roster of competent independent experts, if any, to provide comments to the Commission on the Environmental Plans within the consultation period.

2. The applicant shall consider the comments provided pursuant to paragraph 1 when fulfilling the requirement at regulation 93bis (9). The applicant shall submit any revised documentation and the written response to consultation as required by Regulation 93bis (9) to the Secretary-General within a period of 60 Days following the close of the comment period or such longer period as determined by the Secretary-General following a request by the applicant. The Secretary-General may extend this time period, upon a reasonable request by the applicant to revise the plans or responses. Notice of the extension of the period shall be posted on the Authority's website.

2. bis The Secretary-General shall provide the Environmental Plans, and the nonconfidential parts of the Test Mining Study, if applicable, and comments submitted pursuant to paragraph 1(a), together with any responses by the applicant provided pursuant to paragraph 2 bis, and any other relevant additional information to the Commission and request the Commission to provide its comments on the Environmental Plans and the non-confidential parts of the Test Mining Study, if applicable, within 90 Days.

3. The Commission shall, as part of its examination of an application under Regulation 12 and assessment of applicants under Regulation 13, examine the Environmental Plans and the non-confidential parts of the Test Mining Study, if applicable, the comments submitted under paragraph 1(a), taking into account the consultation submissions received under Regulation 93bis, the applicant or Contractor's written response prepared under Regulation 93bis(9), together with any revisions and responses provided by the applicant under paragraph 2 bis, and any additional information provided by the Secretary-General under paragraph 2, and shall provide its comments to the Secretary-General.

3. quat. The Secretary-General shall, within 7 Days after receiving comments from the Commission, provide such comments to the applicant and publish them on the Website of the Authority.

3. quin. The applicant shall consider the comments provided pursuant to paragraph (3) and shall revise the Environmental Plans or provide responses in reply to the substantive comments, and shall submit any revised plans or responses to the Secretary-General within a period of 60 Days after receipt of comments from the Secretary-General. The Secretary-General may extend this time period, upon a reasonable request by the applicant to revise the plans or responses. Notice of the extension of the period shall be posted on the Authority's website.

4. Notwithstanding the provisions of Regulation 12 paragraph 2, the Commission shall not consider an application for approval of a Plan of Work until the application has been published and if necessary, revised in accordance with this Regulation.

5. The Commission shall prepare a report on the Environmental Plans and nonconfidential parts of Test Mining Study, if applicable, which shall be published on the Authority's website, and shall be included as part of the reports and recommendations to the Council pursuant to Regulation 15. The report shall include:

(a) Details of the Commission's determination under Regulation 13(4);

(b) Details of the comments and responses submitted under paragraphs (1) and (2 bis);

[(b bis) Details of the consultation submissions comments and responses received under Regulation 93bis (8), the Commission's comments under regulation 11(1)(b), the applicant or Contractor's written response prepared under Regulation 93bis (9),]

(c) Any further information provided by the Secretary-General under paragraph (2);
(d) Any amendments or modifications to the Environmental Plans recommended by the Commission under Regulation 14 and changes subsequently made to application documents by the applicant; and

(e) The relevant rationale for the Commission's determination, with specific explanation as to any comments or responses that are disregarded.

[5. In preparing its report under paragraph 5, the Commission [may]/[shall] seek advice from competent independent experts, as necessary. The experts shall be selected and appointed taking into account the relevant Guidelines.]

6. The report of the Commission on the Environmental Plans or revised plans shall be published on the Authority's website in accordance with Regulation 92, and shall be included as part of the reports and recommendations to the Council pursuant to Regulation 15.

Comments

- Several proposals were once again received to substantially revised and refine the draft regulation during the twenty-ninth session, and the text thus contained significant mark-up. For the sake of clarity and aiming to offer a text suitable to attract consensus, the Regulation has been placed in a clean version. Previous iterations and proposals remain available online.
- The text of the draft heavily relies on the outcomes of intersessional work on a Standardized Approach for Stakeholder Consultation, among other inputs.
- While there were various proposals in respect of the title of the Regulation, there was opposition to alternative formulations during the 29th session. An alternative formulation is retained for the delegations' consideration.
- Several delegations opposed alternative proposals for paragraph 1, which have been removed but remain available on the website of the Authority.
- Delegations appear to disagree on the necessity of what is now paragraph 5. Delegations are invited to consider this matter.

We find this new DR11 extremely confusing, and have the following questions:

1) **Why does it cover only the Environmental Plans and the Test Mining Study [or Report]?**

We think it should be the whole application. Other parts of an application, including the Mining Workplan, Financing Plan, Training Plan, Maritime Security Plan etc. may contain information highly relevant to a stakeholder consultation on the ISA's decision-making on an application for Exploitation. We recall this same point being made during Council's meeting in March 2024 by many delegations, including: Australia, Norway, Germany, France, Spain, Japan, Belgium, Netherlands, Ghana on behalf of the African Group, Denmark, Brazil, and Fiji (with China and Russia disagreeing). Stakeholders may have technical expertise highly relevant to the evaluation of a Mining Plan, Financing Plan, Training Plan, Maritime Security Plan, or other document. Especially official Observers who have committed to providing that expertise during the ISA Observer application process.

2) **Why are stakeholder comments on an ISA-led consultation about an ISA decision immediately passed to the applicant?**

The applicant should have conducted its own stakeholder consultation on its application prior to submission. Upon receipt of an application, the ISA should be engaging with its stakeholders and reviewing their comments to inform its own decision on the application. If the stakeholder feedback gives rise to a need for the ISA to raise questions with the applicant, then this is also fine: the ISA can engage with the applicant. But this DR11 seems to have the ISA acting as some sort of passive postal service for the applicant and/or running the applicant's consultation for them (after application submission). This is odd. It does not suggest a meaningful ISA-led consultation process with the aim to enable participation by stakeholders in the ISA's decision-making. We suggest a re-think of the process, and the underlying principle of public participation in environmental decision-making.

3) **Why is the LTC reviewing the Environmental Plans three times?**

As we read it, paragraph (1) has the LTC review the Environmental Plans concurrently with the public consultation. Paragraph (2 bis) has the LTC review the Environmental Plans a second time (along with any updates or submissions from stakeholders). Paragraph (5) and DR12 has the LTC review the Environmental Plans a third time (along with any new updates from the applicant, them having been given a third (or possibly fourth) opportunity to submit new information. This seems inefficient. (Also, if the LTC is doing this during its in-person meetings, that could cause significant delays in the process).

Alternative options could be (i) for the public consultation to run first and to bring comments to the LTC, who then conduct their review of the application (along with the stakeholder comments), or (ii) for the LTC to conduct an initial review of the application and to publish both a copy of the application and the LTC's preliminary assessment for public consultation, with the results from that consultation informing the LTC's final review and recommendations. We prefer option (ii) as it avoids duplication of the consultation(s) already run by the application/contractor, it offers the most tailored inputs to assist the ISA's decision-making, and generally would be more efficient, transparent and participatory for all actors.

4) **Is it clear what is meant by the numerous different references to 'comments' throughout DR11?**

We understand that the process set out in DR11 currently involves: (i) comments from stakeholders, (ii) possible comments from an expert review panel, (iii) round 1 comments from the LTC, (iv) round 1 comments from the applicant in response to LTC comments, (v) round 2 comments from the LTC, (vi) round 2 comments from the applicant in response to the LTC comments, (vii) possible comments from independent experts commissioned by the LTC, (viii) LTC report. It is confusing, just generally – and specifically confusing which one(s) of these 'comments' are referred to each time the word is used throughout DR11.

In relation to paragraph (1) and the second paragraph (5) [which we believe should be labelled (5 bis)], we strongly support empowering and encouraging the LTC to seek and integrate best available science and information from **independent experts**, which can be done without undermining or eroding the LTC's role in any way, as is envisaged in UNCLOS Article 163(13) and 165(2)(e). It is well-established that the LTC has an overwhelming workload and does not possess adequate environmental expertise within its membership to adequately discharge the very technical scientific analysis across multiple scientific disciplines that would be needed for a review of a plan of work for Exploitation. We prefer the wording: '*shall…as necessary*'. This leaves discretion to the LTC to seek expertise externally only where they do not find it within their own membership. So, the use of 'shall' does not inappropriately fetter the LTC's autonomy, but is important nonetheless as it gives the Council, an applicant or other third-party a

means to challenge the LTC's decision if the LTC were to conduct their review inappropriately with limited internal expertise and not seek external expertise. It is an important aspect of institutional accountability and access to justice that the LTC can be held to certain standards of procedure and quality of decision-making. So, we consider the inclusion of this paragraph, phrased as ‘shall... where necessary' very important. If the wording is retained with ‘may’ then it is difficult to see any operative purpose to this paragraph. We see there may be some overlap in relation to expert use within DR11(1) and (6) and DR12(3 bis) and consider these could be consolidated - provided the point is not lost.

As a general comment we note that the draft regulations speak in several places of ‘independent experts’ with reference to Guidelines regarding expert selection and appointment, and a roster - but these do not currently exist. This cross-cutting issue needs further attention, including to identify: who qualifies as an independent expert, how this is assessed, when such expertise can or must be used, and by what procedure and on what terms those experts may be selected and used etc. This is an extremely important part of the regime and should be safeguarded to protect against conflicts of interest, corruption, or other procedural factors that may lead to poor and challengeable outcomes. Guidelines may not provide sufficiently binding rules in this regard; a Standard or new Annex to the Regulations is advised instead.