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 13 ~~Alt.~~
Assessment of applicants and application

1. In assessing both the applicant and the application, the Commission shall take into account all information pursuant to Regulation 12(4) and all applicable Standards and Guidelines when making its determinations under this Regulation.
2. The Commission shall determine whether the applicant meets the following criteria:
   (a) The applicant is a qualified applicant pursuant to Regulation 5;
   (b) The applicant has given the undertakings and assurances specified in Regulation 7(2);
   (c) The applicant and, if applicable its parent company, legal predecessor, senior management and controlling shareholders, have satisfactorily discharged their obligations to the Authority, including having a satisfactory record of past performance both within the Area and in other jurisdictions;
   (d) The applicant has demonstrated that it will meet the requirements in regulation 18 bis;
   (e) The applicant has the financial and technical capabilities and capacity to carry out the Plan of Work, meet or exceed environmental performance obligations and to meet all obligations under an Exploitation Contract, pursuant to the applicable Standard, in accordance with paragraphs 3 and 4 of this Regulation; and
   (f) The applicant is under the Effective Control of the Sponsoring State in accordance with paragraph 5 of this Regulation.
3. In considering the financial capability of an applicant, the Commission shall determine, in accordance with Standards and taking into consideration the Guidelines, whether:
   (a) The Financing Plan is compatible with proposed Exploitation activities;
   (b) The applicant is capable of committing ~~[or raising]~~ sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any Exploitation Contract, including:
      (i) The payment of any applicable fees and other financial payments and charges in accordance with these Regulations ~~[in order to ensure that the project will benefit humankind as a whole]~~;
      (ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan; and
      (iii) Sufficient financial resources for the prompt execution and implementation of the Emergency Response and Contingency Plan, and effective response to an Incident;

(c) The applicant demonstrates that it will purchase insurance products that are appropriate to the financing of exposure to risk in accordance with Regulation 36, and applicable Standards, taking into consideration the Guidelines;

(d) The applicant has proposed an Environmental Performance Guarantee whose amount and form is assessed by the Commission to be adequate, and in conformity with the requirements of Regulation 26 and the applicable Standard, and taking into consideration any Finance Committee report or the Guidelines.

4. In considering the technical capability of an applicant, the Commission shall determine, in accordance with Standards and taking into consideration the Guidelines, whether the applicant has provided sufficient information to demonstrate it has:

~~[(a) Certification to operate under internationally recognised quality control and management standards;]~~

(b) The necessary technical and operational capability to carry out the proposed Plan of Work in accordance with Good Industry Practice and Best Environmental Practices using appropriately qualified and adequately supervised personnel;

(c) The technology, [~~knowledge~~][data, information], and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, ~~and~~ taking into account the applicable Regional Environmental Management Plan, including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects, and to modify management and operating procedures as required to meet all environmental requirements;

(d) Established the necessary risk assessment and risk management systems to effectively implement the proposed Plan of Work in accordance with Good Industry Practice, Best Available techniques, Best Available Scientific Information, and Best Environmental Practices, and these Regulations, including the technology and procedures to meet health, safety and environmental requirements for the activities proposed in the Plan of Work;

(e) The capability to respond effectively and promptly to Incidents, in accordance with the Emergency Response and Contingency Plan;

(f) The capability and capacity to utilize and apply Best Available Techniques;

(g) A safety management system that meets the requirements of Regulation 30 bis; and

(h) An Environmental Management System that meets the requirements of Regulation 50 bis.

5. In considering whether the applicant is under the Effective Control of the Sponsoring State, the Commission shall determine:

(a) [insert wording based on outcome of intersessional work];

(b) Whether the Sponsoring State has enacted domestic legislation covering activities in the Area that:

(i) is in force and applicable;

(ii) provides available recourse through the domestic legal system in accordance with Article 235(2) of the Convention; and

(iii) does not contain provisions that exempt liability of the sponsored entity from a cause of action that may result from its conduct of activities in the Area.

6. [If the applicant meets the criteria set out in paragraphs 1-5,] t~~T~~he Commission shall determine whether the application meets the following criteria:

(a) The application is accompanied by a certificate of sponsorship;

(b) The application is in conformity with these Regulations, the applicable Standards, the relevant Regional Environmental Management Plan and takes into consideration Guidelines;

(c) The application provides for benefits for humankind, reasonable regard for other activities, effective Protection of the Marine Environment, and Protection

of cultural rights or interests, in accordance with paragraphs 7 to 10 of this regulation.

7. In considering whether an application provides for benefits for humankind as a whole, the Commission shall determine:
   (a) Whether the Plan of Work will provide optimum revenue to the Authority, and taking into account negative externalities caused by any damage to the Marine Environment, will benefit humankind as a whole;
   (b) Whether the Plan of Work is consistent with [~~the fundamental policies and~~] [the approached,] principles [and policies] contained in Regulation 2;
   (c) Whether the Plan of Work provides for the effective Protection of human life, and health and safety of individuals engaged in Exploitation, in accordance with the rules, regulations and procedures adopted by the Authority. [~~and by any other competent international organizations~~]

8. In considering whether an application provides for reasonable regard for other activities in the Marine Environment, the Commission shall determine:
   (a) Whether the Plan of Work provides for Exploitation to be carried out in line with Regulation 31 and Articles 87 and 147 of the Convention, and in accordance with the applicable Standards and taking into consideration the Guidelines;
   (b) Whether the Plan of Work has demonstrated due diligence in relation to the accommodation of other activities in the Marine Environment, including to:
      (i) identify in-service and (to the extent information is available for the applicant) planned submarine cables and pipelines in, or adjacent to, the area under application using ~~the~~ publicly-available data and resources taking into account the Guidelines;
      (ii) identify sea lanes in, or adjacent to, the area under application that are essential to international navigation;
      (iii) identify areas of intense fishing activity as may be defined in Standards or Guidelines in, above, or adjacent to, the area under application;
      (iv) identify any other activities in or adjacent to the Contract Area in accordance with Regulation 31, including marine scientific research activities, activities relating to marine genetic resources, and environmental Protection measures and area-based management tools established or proposed by competent international organizations; and
      (v) where other marine users are identified in relation to the area under application whether listed in the Regional Environmental Management Plan or identified by some other means, consult with those users to agree measures the Contractor will take to give reasonable regard to their activities pursuant to Regulation 31.

9. In considering whether an application provides for effective Protection of the Marine Environment, the Commission shall determine:
   (a) Whether the Plan of Work demonstrates that it will meet the Authority's Strategic Environmental Goals and Objectives under Regulation 44ter, the regional environmental objectives and measures under the relevant Regional Environmental Management Plan, and the environmental thresholds in the applicable Standards, taking into consideration the cumulative effects of all [~~Relevant~~] [Exploitation] Activities [~~and climate change~~];
   (b) Whether the Plan of Work, complies with the principles set out in Regulation 44(1);
   (c) Whether the Plan of Work demonstrates that:
      (i) it is based on adequate environmental baseline data, in accordance with applicable Standards and taking into consideration the Guidelines;
      (ii) it complies with the Standards developed pursuant to Regulation 45;

(iii) the Plan of Work gives full effect to the precautionary principle or approach as appropriate;

[(iv) it will not cause Environmental Impacts outside of the relevant Contract Area and will not cause Environmental Impacts to any area designated by the Authority ~~[~~or other relevant authority~~]~~ as a protected area in terms that prohibit such impact];

(v) it includes Preservation Reference~~s~~ Zones and Impact Reference Zones in accordance with the criteria contained in Annex X bis;

(vi) performance of the Plan of Work can be effectively monitored and controlled by the Authority, to minimise Environmental Effects, and ensure compliance with the rules, regulations and procedures of the Authority;

(vii) identifies and manages appropriately the [~~certainties,~~][gaps and] uncertainties [~~or inadequacies~~] in the data or information available at the time of application; and

(viii) meets equivalent standards to relevant international rules with regards to any deliberate disposal of vessels, platforms or other man-made structures at sea.

(d) Whether the Plan of Work ensures effective Protection of the Marine Environment, in accordance with all applicable environmental requirements in the Convention, Agreement, and the rules, regulations and procedures of the Authority, taking into account:

(i) Any Environmental [Impacts and Environmental] Effects [~~or impact on other activities~~] of allowing the Exploitation activity;

(ii) All proposed Mitigation and risk management measures;

[~~(iii) An evaluation of harmful effects individually, in combination, as well as cumulatively, including effects from other activities in the area under application;~~]

(iv) The effects on human health that may arise from Environmental Effects;

(v) The importance of protecting the biological diversity and integrity of marine species, ecosystems and processes;

(vi) The importance of protecting rare and vulnerable ecosystems and the habitats of threatened species;

(vii) Traditional knowledge or cultural interests relevant to the Protection of the Marine Environment;

(viii) The matters set out at Regulation 46(3)(b);

(ix) The assessment framework for Mining Discharges as set out in the Guidelines; and

(x) Any relevant Standards and Guidelines developed in accordance with Regulations 94 and 95.

10. In determining whether an application provides for the protection of cultural rights or interests, the Commission shall [determine whether the application]:

(a) [~~Determine whether the application~~] A~~a~~dequately identifies such cultural rights or interests;

(b) Demonstrates that the Plan of Work will not interfere with any cultural rights or interests; and

(c) [Adjust text based on the outcome of the intersessional WG on this topic].

Comment

During the first part of the twenty-ninth session, the alternative wording of Article 13 gained wide support, subject to a number of amendments. This alternative wording is now the only iteration appearing in the revised consolidated text, with the proposed amendments highlighted. As per the explanations accompanying these proposals, they are largely driven by the intention to remove elements deemed redundant by several delegations.

We support this new text for DR13, based on the previous 'Alt' proposal, and find it generally coherent and comprehensive, yet avoiding redundancies through use of cross-referencing to other obligations in the regulations. The structure also better aligns with Article 6 of Annex III of UNCLOS by focussing first on the applicant and then the application, and we find the sequencing and description of criteria logical and clear.

We have the following, drafting comments:

- **Sub-paragraph (2)(a)**: We wonder if paragraph (2)(a) should cross-refer to the whole of DR5 (as drafted), or only some paragraphs of DR5? For example, paragraph DR5(2) refers to the contents of an application, and not the nature of a 'qualified applicant, so does not seem so relevant here.
- **Sub-paragraph (2)(c)**: We support the intention behind paragraph (2)(c). It is not just the applicant as a corporate entity that should be scrutinised, but also its owners and managers. We agree that it would be sensible due diligence for the ISA to inform itself about any track record from an applicant of breaching licences for offshore extractive industries or otherwise causing marine environmental damage in any location. We would suggest a few drafting amendments for clarification however (our proposed edits in red font) "*... have satisfactorily discharged ~~their~~ any previous obligations to the Authority, including having a satisfactory record of past compliance and environmental performance both within the Area and in any other jurisdictions in which they operate or have previously operated.*" We also suggest that the term **"Company Principals"** be used consistently each time this point arises in the Regulations, and that this should be defined in the Schedule, to ensure common understanding that this pertains to the persons taking key operational and management decisions.
- **Sub-paragraph (3)(b)**: We support the deletion of the text '*or raising*' (about the financial resources of the applicant). As noted above in our comment to DR7(3 bis), applicants must be assessed based on realism and evidence, not future hypotheticals. The Council cannot (according to UNCLOS) approve an application where the applicant does not have relevant **financial capability**.
- **Sub-paragraphs (3)(e)** and **(3)(f)** [deleted]: Previously, paragraph (3) of DR 13 included the following additional provisions: "*(e) The applicant maintains an acceptable **debt-to-equity ratio**;* and "*(f) The terms of any loans used by the applicant to finance the proposed Exploitation adhere to **Equator Principles**, the performance standards of the International Financial Corporation or equivalent*." We are unsure why they were deleted; we do not find them in the Suspense Document. We considered sub-paragraph (e) a useful indicator of solvency directly relevant to the applicant's financial capabilities, and (f) a sensible means for the ISA to ensure international standards on environmental, social, and governance matters apply to the project's funding, which will add a helpful extra layer of scrutiny and regulation to the ISA's own via the lender. We would like to see these two sub-paragraphs reinstated.
- **Sub-paragraph (4)(a)**: We are unsure of the rationale for deletion of paragraph (4)(a) of DR13. We found no record of any request for deletion. We saw the notion of **certification schemes** as potentially a useful one, again providing support to the ISA's own due diligence and regulation, via third-parties set-up for such standard-setting and auditing. We note the joint submission by the Netherlands and Ireland that further explained this notion - and also proposed some additional text that we do not see in this draft of the regulations.[1] If reinstated, we would suggest that this application criterion be supplemented by a specific obligation for Contractors to hold relevant certifications (e.g. in DR18 bis). Supporting Standards or Guidelines to inform Contractors which certification schemes are included may also be useful.
- **Sub-paragraph (4)(b):** We wonder if paragraph 4 should include wording to implement UNCLOS Article 150's requirement that Exploitation shall be orderly, safe and rationally managed, efficient, and avoiding unnecessary waste? These points were previously included in paragraphs in DR29 that have now been deleted, and we are unsure if the points are captured elsewhere in the Regulations now.
- **Paragraph (7)**: We would suggest adding into paragraph 7 (on **benefits to humankind**) three important criteria that are currently omitted:
    - (d) whether the Plan of Work provides for the transfer of technology in accordance with Articles 144 and 274 of the Convention;
    - (e) whether the Plan of Work provides for participation of developing States in activities in the Area in accordance with Article 148 of the Convention; and

[1] https://www.isa.org.jm/wp-content/uploads/2023/12/Netherlands-Ireland-DR13_INSTIT.pdf

    - (f) whether the Plan of Work provides for programmes of scientific, educational, technical and other assistance to developing States in accordance with Articles 144, 202 and 274 of the Convention, and Section 5 of the Annex to the Agreement.
- **Sub-paragraph (7)(c)**: Capitalisation of 'Protection' (in relation to human life) in paragraph 7(c) seems to be an error, as the new defined term of 'Protection' in the Schedule pertains to environmental protection (only). We presume that the '*other competent international organizations*' deleted text in paragraph 7(c) would refer, for example, to the International Labour Organisation's Maritime Labour Convention 2006, which sets conditions of work for seafarers including health and safety protection for any vessel? While such rules may be overseen by bodies outside of the ISA, it seems to us sensible that the LTC and Council would require applicants to evidence that their **vessels and flag States** comply with such rules. We would suggest retaining this language for that reason.
- In relation to **paragraph (9)(a)** we would like further discussion about the deletion of 'climate change'. We heard a delegation request deletion in the 2024 Council session on the grounds that there is no proven relationship between deep seabed mining and climate change. We disagree entirely with that statement (and would refer in this regard to both legal grounds e.g. the ITLOS Advisory Opinion on climate change, and scientific grounds e.g. as set out in this briefing note by DOSI: Climate Change Considerations are Fundamental to Sustainable Management of Deep-Seabed Mining). In any event, we also consider the comment misunderstands the point of paragraph (9)(a), which is requiring the LTC to consider an application and its likely environmental impacts within a wider context of natural and anthropogenic changes occurring in the deep-sea environment, with which the Exploitation impacts must be considered in accumulation.
- **Sub-paragraph (9)(c)**: We support retention of the (now bracketed) sub-paragraph 9(c)(iv). **Restricting environmental impacts to the Contract Area** seems an excellent way to set a measurable limit on environmental impacts, to prevent transboundary harm or harm to areas designated for protection, and to reduce overall harmful effects by confining environmental impacts to the area of the seafloor which would be already significantly harmed by the mining activity. It also avoids cumulative impacts from multiple contract areas. As a drafting point, sub-paragraphs (vii) and (viii) of paragraph 9(c) need to start differently, so that they follow correctly from the chapeau (they currently read "*Whether the Plan of Work demonstrates that - identifies and manages*...and "*Whether the Plan of Work demonstrates that - meets equivalent standards...*").
- **Sub-paragraph (9)(d)**: We do not agree with the deletion of sub-paragraph 9(d)(iii), which covered an important consideration of cumulative or combined impacts. We suggest to retain, but to revise the wording '*from other activities in the area under application*' to '*from other activities in the vicinity of the area under application*', as there may be activities not occurring within the Contract Area under application, but which may nonetheless cause impacts within the Contract Area, or otherwise combine with impacts coming from the proposed activities but which affect the environment outside the Contract Area. An example may be where the Contract Area under application is adjacent to another existing Contract Area where Exploitation has begun. This is not an activity '*in the area under application*' but is highly relevant to an assessment of **cumulative impacts** should the new application be approved. Finally, in sub-paragraph 9(d)(viii), we are unsure whether the cross-reference to DR46(3)(b) is correct? (DR46(3)(b) stipulates that an EIA shall (b) *Be carried out by [competent], [qualified,] [and] [independent] experts".*)