

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 3

#### Duty to cooperate and exchange of information

In matters relating to these Regulations:

(a) Members of the Authority, the Enterprise, Applicants and Contractors shall cooperate with the Authority [to facilitate the performance of its duties and responsibilities under the Convention, *inter alia*, by providing the Authority with] [to provide] such data and information [as is] necessary for the Authority to discharge its duties and responsibilities under the Convention;

(b) [The Authority in cooperation with Sponsoring States shall develop effective and transparent communication, public information and public participation procedures and ensure their implementation][The Authority, and Sponsoring States, flag States, and port States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements];

(c) ~~The Authority and Sponsoring States shall cooperate to develop, implement and ensure effective and transparent communication, public information and public participation procedures;~~

(d) [The Authority shall consult and, where relevant, cooperate with members of the Authority, including Sponsoring States, coastal States, port States, flag States, relevant global, regional, subregional and sectoral bodies to develop measures to implement these Regulations, including to][The Authority shall consult and, where relevant, cooperate with Sponsoring States, coastal States adjacent to the Contract Area, port States, flag States, competent international organizations and other relevant parties as appropriate, to develop measures to implement in these Regulations, including to];

(i) Ensure effective ~~p~~**P**rotection of human life and property at sea, and effective ~~P~~**P**rotection of the Marine Environment, with respect to activities in the Area;

(ii) Exchange information and data to facilitate compliance with and enforcement of rules, regulations, and procedures of the Authority; and

[(iii) Facilitate access to sites and items that may fall outside the Authority's jurisdiction to be inspected under these Regulations for the purposes of Contractor compliance-monitoring compliance and enforcement.]

(e) Contractors, the Enterprise, Sponsoring States and members of the Authority shall cooperate with the Authority in the establishment and implementation of programmes to observe, measure, evaluate and analyse the impacts of Exploitation and related activities on the Marine Environment, including at the regional scale, to share the findings and results of such programmes with the Authority for wider dissemination

and to extend such cooperation and collaboration to the implementation and further development of Best Environmental Practices in connection with activities in the Area;

(f) Members of the Authority, Sponsoring States, Contractors, and the Enterprise shall, in conjunction with the Authority, cooperate [in accordance with their respective capabilities and resources]~~[with each other, as well as with other Contractors and national and international scientific research and technology development agencies]~~ with a view to:

- (i) Sharing, exchanging and assessing environmental data and information for the Area, including by use of data repositories and open-access databases;
- (ii) Identifying gaps in scientific knowledge and developing targeted and focused research programmes to address such gaps;
- (iii) Collaborating with the scientific community to identify and develop best practices and improve existing standards and protocols with regard to the collection, sampling, standardization, assessment and management of data and information;
- (iv) Undertaking educational awareness programmes for Stakeholders relating to activities in the Area;
- (v) Promoting the advancement of marine scientific research in the Area for the benefit of humankind as a whole; and
- (vi) Developing incentive [structures] mechanisms, including market-based instruments, to support transfer of technology and capacity [enhancement] building of developing states [and the Enterprise], and to enhance the environmental performance of Contractors beyond the legal requirements including through technology development and innovation.~~;~~ ~~and~~

(g) In order to assist the Authority in carrying out its policy and duties under section 7 of the Annex to the Agreement, Contractors and members of the Authority shall enable access to non-confidential information, upon the request of the Economic Planning Commission, or other appropriate organs of the Authority to facilitate the Authority's preparation of studies on the potential impact of Exploitation in the Area on the economies of developing land-based producers of those Minerals which are likely to be most seriously affected. The content of any such studies shall be in accordance with specific terms of reference and applicable Standards, and shall take taking into consideration Guidelines.

(h) The Council shall, taking into account recommendations by the

(i) ~~;~~ adopt Standards and Guidelines [concerning the duties mentioned in subparagraphs (e) to (g)] which establish requirements, obligations and procedural arrangements, including standardized data templates and methodology for data collection and analysis [within 3 years after the adoption of these Regulations or before any Commercial Production commences, whichever takes place first].

Broadly we welcome the text of draft Regulation 3.

We do not see '**Applicant**' (used in the chapeau) included in the Schedule of defined terms, but propose it is added, defined as 'An applicant for a plan of work for exploitation in the form of a contract with the Authority'.

We support the inclusion in paragraph (d) of the reference to **other relevant intergovernmental bodies**, but wonder whether the drafting works? As written now, it seems that '*relevant global, regional, subregional and sectoral bodies*' are being included in the category of 'members of the Authority'. We suggest deletion of "*members of the Authority, including*" before Sponsoring States. We also suggest the addition of "*States where contractors are listed on a stock exchange*" after flag states. Important data or records might be stored in a jurisdiction outside the control of the sponsoring State, or there may be other circumstances that require cooperation.

In **sub-paragraph (d)(i)** we do not think the capitalised ‘**Protection**’ before ‘of human life and property at sea’ makes sense considering the defined term ‘Protection’ in the Schedule relates specifically to the environment. As noted above, we would suggest clarifying this throughout the Regulations, with the defined term being re-phrased as ‘Protection of the Marine Environment’. Then, in other instances, such as discussing health and safety, the usual meaning of the word ‘protection’ can be used.

We support inclusion of **sub-paragraph (d)(iii)**. This appears to be the principal part of the Regulations that would cover the need for cooperation between the ISA and member States in the event that inspection or enforcement activities are required to take place under national jurisdiction e.g. facilities on land need to be inspected, personnel onshore need to be questioned, or on-vessel personnel or equipment that falls under the flag State’s jurisdiction becomes relevant to an ISA investigation. The ISA does not have **jurisdiction to conduct such activities within national jurisdiction** without the permission and cooperation of the relevant State. This may be the sponsoring State but may also be a port State or flag State or other State in which the Contractor has physical presence or operations. This sub-paragraph (d)(iii) helps to clarify the scenario of joint work on inspection and enforcement activity within national jurisdictions.

In **sub-paragraph (f)(i)** we query why ‘**environmental**’ data and information only is covered? We suggest that the word ‘environmental’ should be deleted, or ‘and other’ should be added after it. In our view, there may be other types of data that would benefit from wider dissemination e.g. economic, geological, or technological information. Noting that this would only be done within the prescriptions of other Regulations that preserve confidentiality where appropriate e.g. of proprietary information. In regard to our proposal to widen this paragraph to relate more broadly to any ‘data and information’ about the Area, we recall that the geological resources of the Area are the heritage of humankind, and the revenue they generate is to be equitably shared for the benefit of humankind, hence there is a wide public interest in information pertaining to the geology and the economics. We also recall the many technology transfer provisions and requirements regarding scientific knowledge sharing (not limited to environmental data) that are contained in UNCLOS, but which are not well-reflected in the Regulations currently. We finally note, as a matter of drafting, that this (f)(i) provision should refer to ‘...*information about the Area*’ rather than ‘*information for the Area*’ as is currently written.

In relation to (f)(vi), we note that **transfer of technology and capacity enhancement** of developing States are cornerstones of Part XI of UNCLOS and represent important non-monetary benefits that the ISA’s wider membership may obtain from activities in the Area. These non-monetary benefits become extremely important if, as seems possible, the economics of deep-seabed mining prove challenging, leading to only very minor financial benefits to most ISA member States. These non-monetary benefits are very unlikely to be realised, however, unless the ISA legislates to require or encourage such activities. It is our observation that technology transfer and other capacity development measures have not been given sufficient attention in these Regulations, so we strongly support inclusion in this draft. However, we query whether *incentivisation* is the right approach, as included in this DR3(f)(vi), as opposed to requiring an optimal level of transfer of technology, capacity-building initiatives, joint scientific research, and other such types of non-monetary benefits from activities in the Area, as fundamental obligations of the Contractor under their contract.

In reference to **paragraph (g)**, we recall a query from the United Kingdom previously: whether the Economic Planning Commission may not also need to access confidential information from Contractors and member States? We also preferred the proposal from the previous co-facilitators that the latter part of the paragraph should be moved into a standalone provision (i.e. “*The content of any such studies shall be in accordance with specific terms of reference and applicable Standards, and taking into consideration Guidelines.*”) the rationale is that this sub-paragraph’s focus is on cooperation duties and obligations of Contractors and member States, so is not the right place to introduce an obligation on the ISA in relation to the content of these studies. But a new Regulation that does operationalise the necessary studies and other aspects of the required **Economic Assistance Fund** for land-based mineral-producing countries would be very welcome.

We see that paragraph (h) has been deleted. We are not sure if that is because the relevant points are considered to be covered elsewhere? The United Kingdom in March 2024 suggested drafting amendments to make the provision consistent with other regulations, and we believe it would have been useful to see those proposals reflected here for consideration. We strongly support the institution of **standardised data** templates and methodology. This will help

provide clear expectations for Contractors, reassurance to stakeholders about levels of scientific rigour, and comparable data, usable not only for individual project management but also for regional environmental assessments and future environmental rule-making.

We would also like to propose a new addition to DR3 to mirror the wording in the BBNJ Agreement: “*All meetings of the Council and its subsidiary bodies relevant to the implementation of these Regulations shall be open to observers participating in accordance with the rules of procedure unless otherwise decided by the Council*”. This would serve to operationalise the request previously made of the LTC by both the Council and the Assembly, to hold **open meetings** save where confidential information is being discussed. As the LTC has thus far failed to respond positively to those requests, we consider it is necessary for the Council to make this a binding and default (albeit with space for exemption where appropriate).