

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 31 bis**

**Reducing risk of damage to submarine cables and pipelines**

The Contractor shall endeavour to reduce the risk of damage to submarine cables or pipelines, including as appropriate, through:

- (a) Complying with the measures that the Contractor has agreed with the operators of submarine cables or pipelines in the Contract Area to reduce the risk of damage to any in-service submarine cables and pipelines;
- (b) Identifying current and planned uses or activities relating to submarine cables or pipelines in the Marine Environment transiting, overlapping, or proximate to the Contract Area through publicly available data and resources and any other reasonable means;
- (c) Coordinating directly with the responsible organisations for, or operators of, submarine cables or pipelines in the Marine Environment;
- (d) Promoting awareness of Exploitation activities, including but not limited to using geospatial alert systems; and
- (e) Other measures in accordance with the applicable Standards, and taking into consideration the Guidelines.]

**Comments**

- In paragraph 1, it has been suggested to delete the words “*exploration and Exploitation*” as this appears to be redundant.
- It has been suggested to delete the word “infrastructure” from para 1 as it is not consistent with the language of Article 147(1) of the Convention. Furthermore, it has been suggested to delete the reference to Article 87 of the Convention, as the Article is a general provision that deals with freedom of the High Seas.
- It has been suggested to move draft regulation 31(1)bis and (2) to a new stand alone draft regulation 31 bis concerning reduction of risk of damage to submarine cables and pipelines. This is due to the fact that damage to submarine cables and pipelines is distinct from the obligations to have reasonable regard for other activities in the marine environment.

We disagree that the provisions in DR31bis should apply only to cables and pipelines, and that these extra obligations should be deleted in relation to other marine uses in DR31. We do not understand the basis for the assertion that ‘*damage to submarine cables and pipelines is distinct from the obligations to have reasonable regard for other activities in the marine environment*’ and would welcome further elaboration of this issue. Do other marine uses - such as fishing, other ISA contracts, marine science, bio-prospecting, shipping – not have the same rights and interests to prevent damage to their equipment and activity? We would like to see DR31bis either re-integrated into DR30 or broadened to apply to other marine users who have a right to operate in the space and interests that would be better-protected if the Contractor complies with the DR31 stipulations.

In terms of drafting, specific references to the EMMP and Closure Plan are redundant in paragraph (1) if the reference to the ‘Plan of Work’ is retained (which we would support), as the Plan of Work encompasses all the Contractor’s

plans covered by the Contract. We consider it important that the reference to the REMP is retained in paragraph (1). REMPs should be the ISA's principal tool for mapping out other marine uses and activities in the relevant region, to which Contractors should have due regard.

We also query (as raised previously by member State delegations) whether this DR31 should include a mechanism to enable proponents or operators of other marine activities to inform the ISA in cases where the Contractor may have breached its obligation to have reasonable regard for other activities? As mentioned previously, we note that this may be dealt with by a general third-party complaints mechanism.