

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.

Section 5

**Emergency Response and Contingency Plan, Incidents and ~~N~~otifiable
Events**

Comment

During the second part of the twenty-ninth session, many delegations proposed that draft regulation 53 concerning Emergency Response and Contingency Plan should be replaced from the section concerning the Protection and Preservation of the Marine Environment, since the draft regulation covers a broader scope. Since the regulation is interrelated to draft regulation 33 concerning Incidents, it has been proposed to place the draft regulation here in regulation 32 (which was moved to Section 3, and now is regulation 29ter) The heading of Section 5 has therefor also been updated.

Regulation 32 *[new placement – previously Regulation 53]*

Emergency Response and Contingency Plan

1. An [Applicant] or Contractor shall [prepare] [develop] an Emergency Response and Contingency Plan [as part of its work] [in accordance with this Regulation, Annex V, applicable Standards, prior to] the development and application of [its] Plan of Work, [taking into account the result of the Environmental Impact Assessment] [and] [in accordance with the applicable Standard and taking into account the applicable Guidelines, and the result of the Environmental Impact Assessment. Furthermore, a Contractor shall maintain:

(a) The currency and adequacy of its Emergency Response and Contingency Plans based on the identification of potential Incidents and in accordance with Good Industry Practice, Best Available Techniques, Best Environmental Practices and the applicable Standards and Guidelines, as well as the implementation and monitoring results of the Environmental Management and Monitoring Plan, which shall be reviewed annually and tested at least [quarterly]/[annually][once a year]; and

(b) Such resources, training and procedures as are necessary for the prompt execution and implementation of the Emergency Response and Contingency Plans and any Emergency Orders issued by the Authority including on-vessel presence for rapid emergency response.

2. The Secretary General shall facilitate the exchange of knowledge, information and experience relating to Incidents between Contractors and States, and shall draw on the advice of other relevant international organizations [for the purposes of supporting:] so that such knowledge and information can be used to prevent, reduce and control pollution and other hazards to the Marine Environment, [including the coastline], by [supporting:]

(a) Contractors to meet their requirements, inter alia under Regulation 53(1);
and

(b) the Authority [in the development, revision and dissemination of] ~~[to prepare and revise]~~ applicable Standards and Guidelines and ~~[to develop and disseminate]~~ other appropriate materials.

3. Following an Incident, [the Contractor [must]/[shall] follow the steps set out in Regulation 33.] ~~[a Contractor must submit a detailed report on whether the Emergency Response and Contingency Plan was adequate and to what extent it was complied with, including, among other aspects, expenses incurred, responsibilities and updating of the plan if necessary.]~~

We concur with the new **placement of this regulation**, recognising that an emergency arising for a Contractor may not relate only to harm to the environment – it could very well be e.g. a human safety or maritime security emergency.

We believe the drafting of paragraph (1) has become confused. DR7 already includes the obligation to submit an Emergency Response and Contingency Plan prepared in accordance with Annex V as part of the application for a Plan of Work. There is no need to repeat this requirement here in DR32, especially as the preparation of the Plan should have happened prior to contract issue, and the aim of DR32 is to focus on the operation of the Plan during the contract. We suggest **deleting the entire first sentence of paragraph (1)**. Paragraph (1)'s chapeau could simply read '*A Contractor shall maintain...*' and then continue into the sub-paragraphs.

We see a few other **drafting issues** in DR32, including

- Is the reference in sub-paragraph (1)(a) to “Emergency Response and Contingency Plans” [plural] a drafting error? We think it should read ‘Plan’ [singular].
- Sub-paragraph (1)(a)'s list (of sources upon which the currency of the Plan must be based) is rather convoluted, yet by being specific also risks omitting relevant sources (e.g. new knowledge arising from learned experience). We suggest the wording in sub paragraph (1)(a) from ‘based on...’ should be replaced with wording that mirrors DR29quater (on risk assessment) i.e. “... *in the light of new knowledge and technology developments, Good Industry Practice and Best Environmental Practices.*” That would also then tie in better with paragraph (2), which specifically discusses the dissemination of such relevant new knowledge.
- At the end of sub-paragraph (1)(a), as drafted, it could be misinterpreted that the periodic review described relates to the EMMP, and not to the Emergency Response and Contingency Plan, as surely was the intention. We suggest re-ordering so that the periodicity is addressed first and then the basis follows. i.e. ERCP reviewed annually on the basis of Incidents, best practice and EMMP.
- We suggest re-drafting sub-paragraph (1)(b) to avoid potential for misinterpretation thus: *Such resources, training and procedures, including on-vessel presence for rapid emergency response, as are necessary for the prompt execution and implementation of the Emergency Response and Contingency Plans and any Emergency Orders issued by the Authority including on-vessel presence for rapid emergency response.*
- We believe the reference in sub-paragraph (2)(a) to “Regulation 53(1)” should now be to Regulation 32(1).
- We believe paragraph (3) can be deleted as redundant (as DR33 applies to Contractors and Incidents without DR32(3) needing to specify that separately).