

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 8

Annual reports and record maintenance

Regulation 38

Annual report

1. A Contractor shall, within 90 Days of the end of each Calendar Year, submit an annual report to the Secretary-General regarding its activities in the Contract Area and reporting on compliance with the terms of the Exploitation Contract.
2. Such annual reports shall be in accordance with applicable Standards and taking into consideration the Guidelines and include:
 - (a) Details of the Exploitation work carried out during the Calendar Year, including maps, charts and graphs illustrating the work that has been done and the data and results obtained, reported against and noting variance from the approved Plan of Work;
 - (b) ~~The quantity and [quality] [dry metal content] of the Details on the rResources derived from the Area [recovered]/[extracted], and on during the period and the [volume]/[tonnage] [in dry metric tons and wet metric tons] of Minerals and metals [produced]/[recovered], marketed and sold during the Calendar Year, reported against the [Plan of Work]/ and the [Mining Workplan]. The information to be included in royalty returns pursuant to Regulation 71;};~~
 - (c) Details of the equipment used to carry out Exploitation, and in operation at the end of the period, if different from the Plan of Work;
 - (d) An annual financial report, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, of the actual and direct Exploitation expenditures, which are the capital expenditures and operating costs of the Contractor in carrying out the programme of activities during the Contractor's accounting year in respect of the Contract Area, together with an annual statement of the computation of payments paid or payable by the Contractor to the Authority, governments, state enterprises, and other contractors, as well as payments and other forms of financial benefit received by the Contractor from Sponsoring States, and reported against the Financing Plan;
 - (e) Information on compliance with health, labour and safety standards;
 - (e) bis Details of any accidents or Incidents arising during the period [including a description of the necessary corrective actions that have been taken into account];;
 - (f) Details of training carried out in accordance with the Training Plan;

(g) The actual results ~~{and data}~~ obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against [the Strategic Environmental Goals and Objectives in Regulation 44ter, the relevant Regional Environmental Management Plan including its Regional Environmental Objective and] [where applicable, any criteria and] [thresholds included in the applicable Standards, and against the Environmental Management and Monitoring Plan], together with details of any response actions implemented under the plan and the actual costs of compliance with the plan;

~~{(g) bis A statement indicating whether and how the results obtained from environmental monitoring programmes help to reduce knowledge gaps, particularly with respect to Environmental Impacts of activities in the Area, [and help to support the identification and improvement of Environmental Practices.]}~~

~~{(g) ter Details on the actions taken yearly for the reduction of the following environmental footprints: air pollution, discharges of waste-water and generation of waste (including details concerning the operating costs associated with such actions); of all revenues and operating costs associated with activities in handling and processing, including carbon emissions, to the degree available to support transparent identification of Best Environmental Practices.}~~

(h) A statement that all risk management systems and procedures have been followed and remain in place, together with a report on exceptions and the results of any verification and audit undertaken internally or by independent competent persons, ~~{appointed or employed by the Contractor}~~;

(i) Evidence that insurance is maintained, including the amount of any deductibles and self-insurance, together with the details and amount of any claims made or amounts recovered from insurers during the period;

(j) Details of any ~~{material}~~ changes made in connection with subcontractors engaged by the Contractor during the Calendar Year;

~~{(j) bis Details about any changes made to the Contractor's business structure or collaborations, including but not limited to their subcontractors, holding, subsidiaries, affiliates and ultimate parent companies, agencies and partnerships;}~~

(k) The results of any Exploration activities, including updated data and information on the grade and quality of Resources and reserves identified in accordance with the International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves and applicable Standards and taking into consideration the Guidelines;

(l) A statement that the Contractor's Financing Plan is adequate for the following period;

~~[(m) Details of any ~~{proposed}~~~~{significant}~~ modification to the Plan of Work ~~{and the reasons for such modifications}~~];~~

(n) Details of any changes made to the Contractor's Environmental Management System in accordance with Regulation 50 bis;

(o) Details of any consultations carried out with coastal States, other marine users, or any other Stakeholders, including pursuant to Regulations 31;

(p) A summary of any complaints or whistleblowing reports received during the reporting period and details of how these have been dealt with;

(q) A summary of any performance assessments pursuant to Regulation 52, or review of activities pursuant to Regulation 58 during the reporting period

(r) A summary of how the Contractor has dealt with any inspection reports, Inspector instructions, ~~C~~ompliance ~~N~~otices, monetary penalties or any other regulatory monitoring ~~-[compliance]~~, or enforcement action taken by the Authority or the Sponsoring State ~~{or States}~~ in relation to contractor compliance during the reporting period;

(s) Evidence that the Environmental Performance Guarantee has been paid or maintained in accordance with the ~~{contract terms}~~ and the ~~{rules, regulations and procedures of the Authority}~~;

(t) A summary report of the discharges registered in accordance with Regulation 53 ter; and

(u) The ~~{indicative}~~ planned date of Closure, and an explanation of any changes to the date, if applicable, in accordance with Regulation 59.

~~{2. bis~~ The Secretariat shall arrange for the effective management of the submitted information in order to overcome existing gaps in knowledge concerning the marine ecosystems including their sensitivity and resilience, the determination of environmental quality standards and appropriate exploitation equipment.~~}~~

~~[2. bis~~ ~~Alter.~~ The Commission shall review annual reports received, and shall prepare and submit to the Council a summary report which shall record any trends or findings from the review, and any related recommendations for the Council's consideration. The report should include any information relevant to the formulation by the Authority of rules, regulations and procedures concerning Protection of the marine environment and health and safety.]

~~[2. t~~ ~~Ter.~~ ~~Alt.~~ ~~Ter.~~ In reviewing annual reports, the Commission shall prepare for the Council a report that summarises trends or findings from the annual reports, including but not limited to any knowledge and information relevant to the continuous improvement of the Regulation and the management of activities in the Area, with a particular emphasis on information relevant to better understanding marine ecosystems and the impacts of activities in the Area on such ecosystems [as well as safety and mining equipment.]

3. Annual reports shall be published in the Seabed Mining Register, except for Confidential Information, which shall be redacted. ~~{To this end, Contractors shall structure the annual reports such that any Confidential Information can be clearly identified and extracted.}~~

Comments

- The amendments to paragraphs 2(e)bis, 2(g)bis and 2(g)ter reflect new proposals from several Delegations.
- The President further proposes simplifications across the text of the provisions, with particular regard to the fact that implementing Standards and Guidelines are envisaged to incorporate more technical details on reporting.
- Paragraph 1(b) is proposed to be amended to ensure consistency of language with (and avoid duplication in the light of) the rules governing royalty payment forms.
- The President proposes to remove brackets from the parts of the provision which were not opposed by delegations. Delegations are invited in particular to consider the various formulations in paragraph 2.

Generally, we support the text of DR38. We have a few outstanding **substantive comments**, as follows:

- We wonder if **sub-paragraph (2)(c)** could be deleted? The equipment and technology used should be included in the Mining Plan – and thus would be reported against under sub-paragraph (2)(a). Further, the wording '*if different from the Plan of Work*' suggests that divergence from the Plan of Work may be permitted in this regard without prior approval, which is not the case. Our understanding is that the Plan of Work sets binding commitments that can only be modified in accordance with DR57.

- **Sub-paragraph (2)(e)** could include a requirement to report “*details of any changes made to the Contractor’s Safety Management System pursuant to Regulation 30 bis*”, to mirror paragraph (2)(n) (which covers changes made to the Contractor’s Environmental Management System).
- Consideration could also be given to adding another sub-paragraph e.g. (2)(i bis), to reflect relevant obligations placed upon Contractors in DR43, as well as **international certifications** that may be required (e.g. DR13(3)(a)): “*Details of any new permits, licences, approvals, certificates, and clearances, not issued by the Authority, which are relevant to the lawful performance of the Exploitation Contract, that were obtained by the Contractor (or which terminated) during the reporting period.*”
- We consider that ISA should retain **flexibility to add additional reporting requirements from time-to-time**. While this is suggested by the reference to Standards and Guidelines in the chapeau to paragraph (2), it could be made more explicit with a new sub-paragraph (2)(v): “*Any other matters specific in applicable Standards, as may be amended from time to time.*”
- We wondered if paragraph (2 bis) was intended to be another alternative alongside **paragraphs (2 ter) and (2 ter alt)**, as the content seems similar? We are open to the content in any of the three paragraphs aimed towards the ISA using the information it receives from annual reports in a strategic way, as well as for monitoring individual contractors. We would suggest that DR38 also expressly requires the LTC to include **recommendations to the Council for updates to REMPs, and to any relevant Standards** (including those setting environmental thresholds and providing guidance as to interpretation of ‘Good Industry Practice’, ‘Best Environmental Practices’ etc). It is not clear that REMPs and Standards are included in the term ‘rules, regulations and procedures of the Authority’.
- We suggest that DR38 should be further augmented to require the LTC’s review and report to highlight **any compliance or non-performance concerns** reporting to the Compliance Committee in that regard. (Or the Compliance Committee may review the annual reports directly themselves for this purpose – though that may be duplication of effort, so a reference from the LTC to the CC seems more efficient).

We also have the following **drafting notes**:

- **Paragraph 2(e)(bis)** should refer to Notifiable Events or Incidents (instead of ‘accidents and Incidents’). We are unsure if the “into account” language is necessary.
- **Paragraph (2)(h)**: delete ‘*appointed or employed by the Contractor*’ as this unnecessarily narrows the scope of the provision, as an ‘independent competent person’, may be appointed by the ISA or other source in some circumstances, but any findings reported by them to the Contractor would remain relevant to their annual report.
- **Paragraph (2)(j)(bis)**: add the word ‘*company*’ after ‘*holding*’.
- **Paragraph (2)(k)**: add environmental data, i.e. ‘*including environmental data and updated data and information on the grade and quality of Resources...*’
- **Paragraph (2)(k)** refers to ‘*International Seabed Authority Reporting Standard for Reporting of Mineral Exploration Results Assessments, Mineral Resources and Mineral Reserves*’. We are unsure what document is meant, but presume it refers to Annex V of this set of LTC Recommendations for the Guidance of Contractors? https://www.isa.org.jm/mining_code/isba-21-ltc-15/. In which case we suggest giving the document its correct name and provide the ISBA number for the avoidance of doubt. This will help clarify that the document referred to is a Recommendation document, not a Standard for the purposes of these Regulations.
- **Paragraph (2)(o)**: The word ‘*Regulation 31*’ should be singular (not ‘*Regulations 31*’ as currently drafted).
- **Paragraph (2)(p)**: we suggest clarifying that this provision refers to ‘*complaints or whistleblowing reports received by the Contractor during the reporting period*’, so as not to cause confusion with, or inappropriately oblige the Contractor to respond to, complaints or whistle-blowing reports received by the ISA.
- **Paragraph (2)(r)**: replace the word ‘*monitoring*’ (which is generally used in the Regulations to refer to a Contractor’s obligations to track environmental impacts caused by its activities), with the word ‘*inspection*’ (which is generally used in the Regulations to refer to the ISA’s compliance assurance oversight).
- **Paragraph (2)(s)**: change ‘*contract terms*’ to ‘*Exploitation Contract*’.
- **Paragraph (2)(ter)**: change ‘*should*’ to ‘*shall*’. Capitalise ‘*Marine Environment*’. It may also be helpful clarification to add ‘*human*’ before ‘*health and safety*’.