

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 41

Other Resource categories

1. The Contractor shall notify the Secretary-General within ~~[30-Days]~~ [immediately] if it finds, within its Contract Area, Resources other than the Resource category to which the Exploitation Contract relates. The Secretary-General shall inform the Council about such notification during the next ~~[regular-session]~~ [available meeting] of the Council.
[This notification shall include a detailed description of the resources found].

2. ~~Alt. [The]~~ Any Exploration for and ~~E~~xploitation of ~~R~~esources referred to in paragraph 1 of this Regulation shall be the subject of a separate application to the Authority.

[3. The application must include a detailed exploration and exploitation plan, an Environmental Impact Assessment, compliant with all relevant Regulations, and Standards, a timetable for the proposed activities.]

[4. Until the separate application is approved, the Contractor shall take necessary measures to avoid any exploitation of the newly discovered resources. Any interim exploration activities must be non-intrusive and comply with environmental protection standards.]

Comment

It has been suggested by some delegations to set out the details of the application and interim measures in new paragraphs 3 and 4. Other delegations suggest refraining from that since the requirements of such application already will be governed by other parts of the Regulations.

We think **DR41 has lost its way** through editing. The key policy points are (i) if new deposits are found in a Contract Area that were not previously known to the ISA, the Contractor should report this immediately, (ii) a Contractor has no rights to conduct any Exploration or Exploitation of resources that are not explicitly permitted by its Contract, and (iii) the ISA and Contractor should ascertain whether there are any implications for the carrying out of the existing Contract arising from the new discovery.

In our view, the current drafting of DR41:

- Mostly covers aspect (i), though could additionally specify that there is no need to report deposits about which the ISA already knows.
- Does not cover adequately aspect (ii). It **does not contain a clear prohibition**. Instead, paragraph (4) incorrectly implies that Exploration of a new deposit is permitted without any Contract covering that deposit, and paragraph (3) seems entirely redundant.
- Does not cover aspect (iii).

We **suggest to re-draft**, as follows:

1. The Contractor shall notify the Secretary-General immediately if it discovers within its Contract Area Resources other than the Resource category to which the Exploitation

Contract relates, where their existence is not already known to the Authority, and the notification shall include a detailed description of the Resources discovered.

2. The Contractor shall take necessary measures to conserve any newly discovered Resources.

3. The Secretary-General shall inform the Commission of any notification made pursuant to paragraph (1), and the Commission shall consider, in consultation with the Contractor, whether there are any implications arising from the discovery that may affect the Contractor's ability to perform its Contract or otherwise necessitate a modification to the Plan of Work pursuant to Regulation 57.

4. A Contractor is prohibited from the Exploration or Exploitation of any Resource that is not expressly covered by the Exploitation Contract, even where it is located within the Contract Area.