

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 44 bis [IWG ENV]

Regional Environmental Management Plans

1. The Commission shall ~~only~~ consider an application for a Plan of Work ~~if a~~ Regional Environmental Management Plan ~~has been adopted~~ by the Council for the particular area and type of resource concerned in line with the Council approved procedures and template.
2. In the event that an application for a Plan of Work is submitted for an area where no such Regional Environmental Management Plan exists, the drafting of a Regional Environmental Management Plan applicable to the area in concern shall be prioritised and adopted without any undue delay, taking into account Section 2, Article b and c of the Agreement.

We strongly support DR 44bis paragraph (1) as amended, and without square brackets. These paragraphs reflect the intent of ISA member States that REMPs must be adopted before a plan of work for exploitation can be considered within a particular region (and we note the three joint written submissions made by several member States to that effect in the 2023 round of consultations).¹ Many important obligations in the Regulations that cross-refer to the relevant REMP, would be rendered obsolete (and it would present an unfair playing field for Contractors) if Exploitation Contracts were issued in any areas not covered by REMPs.) We also welcome the addition of the last line in paragraph (1) to ensure due process and a level playing field via the REMP procedure and template document under preparation now by the LTC at the Council's request.

We suggest paragraph (2) should end at '...shall be prioritised'. This is because:

- The phrase '*adopted without undue delay*' is unnecessary as ISA member States must always act in good faith (Articles 157, 300 UNCLOS); and also potentially undermining of the REMP procedure (to be adopted by the Council) which must be followed – as referenced in paragraph (1); and
- We do not understand the reference to 'Section 2' here. Is the intention to refer to section 2 of the 1994 Agreement, which sets out the functions of the Secretariat to act on behalf of the Enterprise before it is independently functioning? If so, we do not see the relevance in this DR44bis. Noting also that Section 2 of the 1994 Agreement sets interim measures for the Enterprise to cover the period prior to the first plan of work for Exploitation being approved. Inclusion of such a reference in the Exploitation Regulations seems short-term and not seem future-proofed.

¹ (1) https://www.isa.org.jm/wp-content/uploads/2023/12/Joint-proposal-DR44bis2_Netherlands-Germany-Costa-Rica-Australia-Belgium-Canada-Portugal-Federated-States-of-Micronesia-Finland-and-the-African-Group.pdf; (2) <https://www.isa.org.jm/wp-content/uploads/2023/12/DR44bis-1-Joint-proposal-Netherlands-Germany-Costa-Rica-Norway-Australia-Belgium-Canada-Portugal-Federated-States-of-Micronesia-Finland-and-the-African-Group-.pdf>;
(3) https://www.isa.org.jm/wp-content/uploads/2024/02/OLD-JOINT_Proposal_44bis.pdf.