

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 45

Development of environmental Standards and Guidelines

1. Environmental Standards and Guidelines developed under this Regulation shall have the purpose of ensuring the effective Protection of the Marine Environment from harmful effects, in accordance with Article 145 of the Convention.

2. The Council shall, based on the recommendations of the Commission, adopt environmental Standards, [resourced and region specific, where appropriate] [in accordance with Regulation 94], inter alia on the following subject matters:

- (a) [Baseline] Environmental studies;
- (b) Environmental quality objectives;
- (c) ~~{Resource and region specific}~~ [geological, physical, chemical and biological] indicators and [associated] quantitative [environmental] thresholds [values], including but not limited to; [i. Toxicity ii. Turbidity and settling of resuspended sediments iii. Underwater noise iv. Light pollution v. Habitat loss vi. Greenhouse gas emissions vii. biodiversity status and ecosystem structures, functions and services] ~~[(i) biodiversity status and ecosystem structures, functions and services; (i) bis Physical properties of water (temperature, salinity, turbidity); (i) ter Chemical properties of water; (i) quad Chemical properties of sediments; (ii) plume characteristics (in particular, composition and characteristics of dissolved and suspended matter, plume dispersion, composition, sedimentation rates); (iii) Physico-chemical Characteristics of seawater and sediment, including water chemistry and temperature (iv) light emissions; (v) noise and vibrations emissions and (vi) greenhouse gas emissions.]]~~
 - (d) Monitoring procedures;
 - (e) Mitigation Measures, [including restoration measures]
 - (f) Minimum technical requirements for environmental protection with regard to all the equipment, [operational procedures and processes [taking place onboard the

~~vessel]]~~ used for the Exploitation activities, [including criteria for the assessment methodology to be used.]

(g) ~~[Procedure for the management and]~~ Assessment of accidental events and natural hazards leading to environmental emergencies as well as environmentally hazardous discharges and residual effects of such emergencies, including preparation and implementation of Emergency Response and Contingency Plans.

(h) Procedural and substantive requirements relating to submissions or reports required by these Regulations, including but not limited to: Plans of Work, Environmental Management Systems, Environmental Impact Assessments, ~~[Environmental Impact Assessment Scoping Report,]~~ Environmental Impact Statements, Environmental Management and Monitoring Plans and Closure Plans.

~~[3. The Authority shall not approve any Exploitation unless the environmental Standards and Guidelines have been adopted.]~~

4. In addition to the environmental Standards, Guidelines on environmental matters may be developed, in accordance with Regulation 95.

5. The application of this Regulation shall be without prejudice to the function of the ~~[Council, [upon recommendation of the] [Commission] to develop other adopt Standards [for the purpose to ensure the effective protection of the marine environment from harmful effects, in accordance with Article 145 of the Convention.] [and Guidelines] on the protection [and conservation] of the natural resources of the Area and the prevention of damage to the flora and fauna of the Marine Environment, taking into account the development of the Exploitation activities in the Area. Environmental Standards and Guidelines shall be regularly reviewed and updated in response to advancements in scientific knowledge and experience and new contributions from Indigenous Peoples and local communities.]~~

Comments

- Some delegations have suggested to reinsert the reference to restoration measures in paragraph 2(e).
- A joint proposal has been made to update the listing in paragraph 2(c). The listing represents a summary of resources and region specific indicators and quantitative environmental thresholds.
- It has been proposed by several delegations to delete paragraph 3 since this would not be in accordance with the Convention and the Agreement.
- One regional group has suggested to update paragraph 5 to better align with Article 145 of the Convention.

The correlation between this DR45 and DR94 (Adoption of Standards) could be clarified. We understand that DR94 creates the power and process for Standards development and establishes their status as binding instruments; whereas DR45 is listing a particular sub-set of those Standards that the ISA must adopt in relation to environmental matters with a stipulated timeframe. With that in mind, we would suggest to re-frame DR45 so that it references more accurately DR94 as the Standard-making power. The current drafting could be read as DR45 creating a separate power and process for a separate type of instrument called an ‘environmental standard’ which we do not believe is the intention.

To clarify that DR45 Standards are a subset of DR94 Standards, we suggest that paragraph (1), the chapeau of paragraph (2) and paragraph (3) be merged and re-phrased as follows: “*Prior to the approval of any Plan of Work for Exploitation, the Council shall adopt Standards pursuant to regulation 94 for the purpose of ensuring the effective Protection of the Marine Environment from harmful effects, in accordance with Article 145 of the Convention on the following subject matters: ...*”

In paragraph (2)(a), we wonder why the word “*baseline*” has been struck out? Baseline studies or investigations (per the previous formulation) seems a more specific topic for a Standard needed prior to the ISA’s evaluative of an application for a plan of work for Exploitation, than the more generic “environmental studies” as now written.

We appreciate the streamlining in **paragraph (c)** (regarding specific environmental thresholds).

We are pleased to see **greenhouse gas emissions** among the list of indicators and thresholds. This seems like an urgent necessity given the planetary climate crisis, and the commitments all States have made to reduce and control emissions in other forums, as well as the recent ITLOS Advisory Opinion clarifying that emissions fall within States' obligations under UNCLOS to prevent pollution. It is our understanding that emissions from deep-seabed mining operations in the Area are not controlled by IMO treaties, or by the UNFCCC, so we urge the ISA to take leadership in setting clear rules in this regard, via the Regulations.

In **sub-paragraph (e)**, we recommend deletion of specific reference to restoration measures considering that no known restoration measures currently exist for deep-seabed mining, and it seems inappropriate to us to require the ISA to prioritise a Standard on a measure that is impossible to achieve.

We are unclear why **paragraph (3)** has been deleted. For us, paragraph (3)'s timing stipulation is a fundamental purpose of this DR45. We find no evidence that 'several delegations' have proposed this deletion. We have only been able to find one request to delete it, made by a coalition of private sector contractors after the first part of the 29th session. This has not been to our knowledge supported by any member States or other ISA delegations. We strongly recommend retention of paragraph (3).

We think both **paragraph (4) and (5) can be deleted**. Our proposal for a new paragraph (1) [above] renders these two provisions redundant, as it already clarifies the relationship between DR45 and DR94.