

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 2

The Environmental Impact Assessment Process

Regulation 46

EnvironmentalThe Impact Assessment Process

1. An applicant or Contractor shall carry out an Environmental Impact Assessment on the potential ~~[impacts and]~~ effects on the Marine Environment of the proposed operations and activities.

2. The purpose of an Environmental Impact Assessment ~~[Process]~~ ~~[under this Regulation]~~ shall be to [identify and inform the Authority's assessment of an application of a Plan of Work under Regulations 13 to 16, ~~[or a Contract's continued adherence to these Regulations]~~ and predict [and evaluate the potential] Environmental Impacts, ~~[effects and risks]~~ ~~[anticipated from]~~ ~~[of]~~ the proposed activities ~~[in the Area]~~ [on the marine environment and identify necessary measures to Mitigate, ~~[prevent], [minimise]~~ or manage [them] ~~[such effects and risks]~~, to enable the Authority to assess the potential adverse Environmental Effects ~~[and risks]~~, with the aim to:

(a) Ensure effective Protection for the Marine Environment from harmful effects which may arise from such proposed activities;

(b) Ensure that activities in the Area are carried out with reasonable regard for other activities in the Marine Environment;

(c) ~~[Avoid Serious] [Prevent] harm to the Marine Environment arising out of the proposed activities;~~

(d) Ensure, in accordance with the Convention, that the Sponsoring State [or States] and the Contractors, conduct the ~~[Plan of Work for Exploitation]~~ ~~[Environmental Impact Assessment]~~ with due regard to the rights and legitimate interests of ~~[adjacent coastal States and any other]~~ potentially most affected coastal State by maintaining, ~~[timely]~~ [targeted and proactive] consultations in accordance with Regulation 93 ter; and

(e) Ensure that the proposed activities are carried out in accordance with [the Convention, the Agreement], ~~the R~~rules, regulations and procedures of the Authority ~~[general International Law and other international and regional seas Conventions]~~ and the applicable Standards and taking into consideration the Guidelines as well as, Best Available Scientific Information, Best Environmental Practices, and Best Available Techniques.

3. The ~~[process for Environmental Impact Assessment]~~ ~~[Environmental Impact Assessment]~~ ~~[Process]~~ shall:

(a) Be based on relevant ~~[and representative]~~ environmental baseline data ~~[based on sufficient scientific information]~~ in accordance with [applicable] Standards ~~[and Regional Environmental Management Plans]~~ and taking into consideration the Guidelines ~~[and the objectives and measures of the [relevant] Regional Environmental Management Plan]~~;

~~[(a)bis Be based on a Scoping Report:]~~

(b) Be carried out by [competent], [qualified,] ~~[and] [independent]~~ experts;

(b) bis Be based on the ~~B~~best ~~A~~available ~~[S~~science and] ~~S~~scientific ~~I~~information; and, ~~[if applicable, taking into account]~~ [where available,] relevant traditional knowledge of Indigenous Peoples and ~~[of]~~ local communities;

(c) Include an Environmental Risk Assessment ~~[and a survey of the seabed to identify Underwater Cultural Heritage,]~~ that takes into consideration the region as a whole ~~taking into account the objectives and measures of [in accordance with]~~ the relevant Regional Environmental Management Plan;

(d) Provide for ~~[Stakeholder]~~ consultation ~~[with all States and Stakeholders]~~ ~~in accordance with Regulation 93 bis, applicable relevant Standards and taking into consideration account the relevant Guidelines]~~;

~~[(d) bis Provide for consultation with all States and Stakeholders in accordance with Regulation 93 bis, relevant Standards and taking into account the relevant Guidelines.]~~

~~[(e) Be subject to an independent [scientific] assessment prior to the submission of the proposed Environmental Impact Statement to the Authority;]~~

(f) Take into account the results from Test Mining, ~~[if applicable,]~~ in accordance with Regulation 48 ter;]

~~(g) — Be conducted in accordance with the terms of reference developed during scoping in accordance with Regulation 47 bis;~~

~~(h)~~ Identify scientific and other knowledge gaps or data uncertainties, and [assess] the degree to which these influence the assessment; and

~~(i)~~ Be an iterative process where specific stages ~~[of the activities]~~ are revisited and may be updated in the light of new information or new activity at a later stage.

4. The Environmental Impact Assessment ~~[P]process]~~ must follow certain procedural steps and entail the following elements:

(a) A ~~stage for~~ scoping ~~Stage and scoping report~~ in accordance with Regulation 47 bis ~~to identify and risk assess the anticipated activities and potential impacts associated with the proposed Exploitation which are relevant to the Environmental Impact Assessment;~~

(b) A stage for assessment ~~[and evaluation]~~ of Environmental Impacts ~~[in accordance with Regulation 47;]~~

(c) A stage on the preparation and submission to the Authority of the Environmental Impact Statement to document and report the results of the Environmental Impact Assessment in accordance with Regulation 47, the applicable Standards and taking into consideration the Guidelines;

(d) The ~~[development,]~~ publication and review by the Commission of the Environmental Impact Statement, and publication of the [Commission's] report and recommendations to the Council pursuant to Regulations 11-15;

~~[(e) A decision by the Council to approve, or not approve, the proposed activities or proposed modification to the Plan of Work that was the subject of the Environmental~~

~~Impact Assessment, including any conditions imposed upon an approval, which decision shall be recorded and published in accordance with Regulation 16, and]~~

~~[(f) A proactive consultation by an applicant or Contractor with Stakeholders at all stages, in accordance with [the applicable relevant] Standards and taking [into] consideration account of Guidelines, which includes:~~

~~[(i) Providing Stakeholders with access to up to date and comprehensive [environmental data and] information [relating to/about] the proposed activities [their and environmental data and] impacts;~~

~~(ii) Using best efforts to obtain Stakeholder comments on the draft scoping report and draft environmental impact statement for a reasonable period.~~

~~(iii) Provide a reasonable opportunity for Stakeholders to raise enquiries and to make known their views;~~

~~(iv) Make publicly available Stakeholder comments received during the consultation process, including on the applicant or Contractor's own website, and~~

~~(v) Record and address, in the scoping report and Environmental Impact Statement respectively, any substantive and relevant Stakeholder comments received.]]~~

Comments

- It has been suggested to rename the regulation to “*The Impact Assessment Process*” as the title currently does not include e.g. social, economic and cultural effects, which currently is anticipated in the draft Standard and Guidelines for the Environmental Impact Assessment Process (ISBA/27/C/4).
- Paragraph 3(e) is suggested deleted as this is a matter for consideration by the Legal and Technical Commission. The Legal and Technical Commission might empower experts to engage with this assessment, if necessary. Paragraph 4(e) has been suggested deleted since it does not concern the EIA process. Also, paragraph 4(f) has been suggested deleted since the stakeholder consultation has been updated in paragraph 3 (d) and (d) bis.
- It should be recalled that the informal Working Group on revising the EIA Process has suggested the move of points (i)-(v) of *litra* (f) in paragraph 4 to a relevant Standard.

We are unsure whether the proposed **title name change** works as it has been done (without making changes in any other part of the Regulations). Many jurisdictions use the term ‘Environmental and Social Impact Assessment’ to signify the inclusion of social aspects in its scope. This is an option for the ISA too – but if preferred, needs to be applied consistently throughout the regulations.

We welcome the amendments in this regulation to clarify that all references to the Environmental Impact Assessment are in fact to the ‘Environmental Impact Assessment Process’, which is distinct from the impact assessment part of the process (also called EIA) covered in DR47. We recommend adding a **definition of ‘Environmental Impact Assessment Process’** in the Schedule to the Regulations, with reference to this provision.

In the chapeau to **paragraph (2)**, we question the rationale for deleting ‘*and the Contract[or]’s continued adherence to*’ (noting the typo here in the draft: it should read “*Contractor’s*” not “*Contract’s*”). Our understanding is that an EIA process can be utilized - not only in the ISA’s assessment of a new Plan of Work - but also during a Contract for example if the Contractor wishes to make a material change to its operations, or wishes to commence Commercial Production in a new mine site within the Contract Area that was not previously covered by the initial EIA. Indeed this is clearly envisioned in DR48 bis. DR46 should align, and not be drafted so as to exclude EIA relevance outside of an application.

Paragraph (2) seeks to describe an EIA process purpose. Our understanding is that the results of the EIA process is recorded in the EIS (a document), which the ISA reviews in its assessment (as covered in paragraph (2)), and which also **forms the basis of the commitments included in the contractor’s EMMP** where a contract is awarded. We find the direct link between the EIA and the EMMP is missing in this DR46. Indeed, **sub-paragraphs (2)(a)-(e)** describe the purpose of the EMMP, not the EIA/EIS. The EIS records findings. It does not ‘ensure’ anything about a Contractor’s future performance. We suggest deleting sub-paragraphs (a)-(e) and checking that they are instead

covered adequately in the DRs about the EMMP (or DRs setting general obligations). In addition precision of drafting is needed. E.g. **Sub-paragraph 2(d)** refers to the *purpose* of an EIA process being to ensure that the EIA process is conducted with due regard to other actors. This does not make sense.

Sub-paragraph (3)(b) relating to Best Available Scientific Information and use of traditional knowledge is a general obligation applicable to all Contractors at all times (via DRs2, 18bis and 44 – which already seems unnecessarily repetitive). It is not specific to the EIA process, and does not need duplicating here.

With regards **sub-paragraph (3)(c)**, we agree that a Contractor should conduct surveys aimed to identify underwater cultural heritage and/or human remains. We are open to whether this is included within the EIA process or separately from it. If it is part of the EIA process, it may not need listing here in DR46, but should be included in other parts of the Regulations that specify the requisite content of an EIA/EIS.

We find the terminology strange in **sub-paragraph (3)(d)** that requires an EIA process only to *'provide for a consultation'* rather than more specifically to *'include consultation'* or *'take into account the results of consultation'*.

We support the retention of **paragraph (3)(e)**. An EIA is science-based and relies on data collected by the proponent. For that reason, **independent scientific assessment (i.e. peer review)** is good industry practice in an EIA process. We take note of the rationale that the paragraph has been deleted because it is up to the LTC to decide when to engage external experts. However, the LTC does not have a role to peer review a Contractor's science. The LTC is reviewing the EIA with specific focus on its role to make recommendations to the Council. A peer review of the EIA data, and the LTC's evaluation of the EIA to inform the ISA's decision-making are two separate functions that should not be erroneously conflated here. We cannot see any reason the ISA would *not* wish to receive independently peer reviewed data. We suggest reinstatement (with possible terminology change to 'independent peer review'). A Standard could be developed to explain more clearly what is intended, so that this is clear to all Contractors, and there is no issue of overlap with the LTC's function.

We suggest reinstatement of **paragraph (3)(g)** also, as it is not stated clearly elsewhere in the Regulations that the **EIA process must adhere to what was agreed in the scoping report**. Without that stipulation, the scoping process and report does not achieve its purpose.

With respect to **sub-paragraph (4)(c)** reference to *'Standards and Guidelines'* can be deleted, as this is covered by DR47 which is cross-referenced here.

We agree that **paragraph (4)(f)** can be streamlined by moving the sub-list into a Standard. We do wish to reiterate the importance of those points, and the proposed Standard. We find the current and continued absence of any existing policies or procedures at the ISA on public participation or stakeholder consultation extremely regrettable, counter to SDG16, and places the ISA in contravention of basic norms of administrative and international law.