

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 47**

**Environmental Impact Assessment**

1. The applicant or Contractor shall, in accordance with the Standards, and taking into [account] the Guidelines, undertake an impact assessment, [as described in Regulation 46 (4),] based on the terms of reference [agreed] in the Scoping Report. This includes assessing:
  - (a) The intensity or severity of the impact at the [area being affected];
  - (b) The spatial extent of the impact relative to the availability of the habitat type affected;
  - (c) The sensitivity [and] vulnerability of the ecosystem to the impact;
  - (d) The ability of an ecosystem to recover from harm, and the rate of such recovery;
  - (e) The extent to which ecosystem functions may be altered by the impact; and
  - [(f) The timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life history stages affected for its long survival.]
2. [In] undertaking the impact assessment, the applicant or Contractor shall complete:
  - (a) An analysis of reasonable alternatives to the planned activity, including the no action alternative;
  - (b) An Environmental Risk Assessment, which adds to the preliminary Environmental Risk Assessment required during scoping by Regulation 47 bis(3)(b);
  - (c) An analysis of the results of the Environmental Risk Assessment, including identification of risks requiring particular focus, including in the Environmental Management and Monitoring Plan;
  - (d) Identification of measures to monitor Environmental Effects to identify measures to [prevent], mitigate and manage such effects and risks to as low as reasonably practicable, while within acceptable levels in accordance with environmental Standards, including through the development of an Environmental Management and Monitoring Plan;
  - [(e) Provide for engagement with [potentially directly affected] Stakeholders and in accordance with [Regulation 93 ter], applicable Standards and taking into consideration Guidelines;]

**Comments**

- Draft regulation 47. bis Alt gained most support during the third part of the twenty-eight session and has thus been retained and the numbering has been updated to draft regulation 47. Joint proposals by several delegations and observers have also been inserted (Joint proposal: [https://www.isa.org.jm/wp-content/uploads/2023/10/Joint\\_proposal\\_DR47\\_48bis\\_ENV.pdf](https://www.isa.org.jm/wp-content/uploads/2023/10/Joint_proposal_DR47_48bis_ENV.pdf)).
- Several delegations have suggested to delete the newly inserted paragraph (2)(e), as it is put forward that according to the non-discrimination provision of Article 141 of the Convention, stakeholder consultations should be open to all States without distinction, and preparing a list would be in contradiction to Article 141 of the Convention.
- The Contractor must first undertake an ERA, and then proceed to identify measures to mitigate such risks. Therefore, it has been suggested to place paragraphs 2(c) and (d) before paragraph 2(b). The numbering of the subparagraphs have been updated.
- Due to the many suggestions and structural changes, the draft regulation has been placed in a clean version.

We generally support the revised and streamlined provision. In the **chapeau to paragraph (1)** to DR 47, the word ‘*agreed*’ has been bracketed. We suggest its retention, to reflect more accurately the procedure with regards to finalising the EIA terms of reference (noting that DR47(bis)(8) specifically requires the Terms of Reference for the EIA to be ‘agreed’ with the LTC) and will avoid an EIA being undertaken on the basis of terms of reference that have not been developed and approved in accordance with the prescribed process in DR47(bis). The ISA’s checking of the proposed terms of reference for the EIA is an important precursor to ensure an appropriately focused EIA, acceptable to the ISA (and could save an applicant a great deal of wasted time and resources, if they were to embark upon EIA activities that were not appropriate to the ISA’s requirements).

In **sub-paragraph (2)(d)**, we would support the phrase ‘*prevent, mitigate and manage*’ which would mirror the language in the BBNJ agreement. Another formulation would be to use the defined term “Mitigate” which would include the measures covered here.

With regards to **sub-paragraph (2)(e)**, we propose bringing back original paragraph (e bis): “*Provide for consultation with all States and Stakeholders in accordance with Regulation 93bis, relevant Standards and taking into account the relevant Guidelines*”. It is important that this provision contain a requirement for the Contractor to conduct a wide Stakeholder consultation in undertaking its impact assessment. ‘Engagement’ is not the same as ‘consult’; and given the common heritage status of the minerals in question, the scope of interested stakeholders should not be limited by subjective assessment of who may be considered ‘directly affected’. A more general requirement for consultation with all stakeholders, as outlined in DR 93bis, would also take care of any concerns vis-a-vis Article 141 of the Convention, as explained in the comment box.

Generally in this DR47, we note that various proposals made by the Intersessional Working Group on Underwater Cultural Heritage do not appear to have been incorporated in this Consolidated Text. We would like to see the proposals reflected for discussion. We generally support the Group’s work to ensure underwater cultural heritage is comprehensively and appropriately included in the Regulations and in the ISA’s decision-making processes for Exploitation.

Furthermore, the text-box for DR46 suggested that the ‘EIA process’ name should be amended to reflect that the process includes **social, economic and cultural impacts**, in addition to environmental impacts. Yet this DR47 (and the remainder of this section of the Regulations) does not seem to reflect this broader scope. Whether or not the EIA includes social and cultural aspects (or whether they will be dealt with separately – and what mechanisms that requires) seem like policy decisions that the Council should take before continuing. It will have a knock-on impact to the drafting throughout.