

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 bis

Scoping

1. An applicant or Contractor, shall undertake scoping and prepare and submit to the Secretary-General a Scoping Report in accordance with this Regulation, Annex III bis, the applicable Standard and taking into account the applicable Guidelines.
2. An applicant or Contractor, shall use Environmental Impact Assessment scoping to identify and prioritize the main activities and potential impacts associated with the proposed Exploitation, in order to focus the Environmental Impact Assessment and Environmental Impact Statement on the key environmental issues.
3. In undertaking the Environmental Impact Assessment scoping, the applicant or Contractor, shall:
 - (a) Review available data and knowledge, and propose additional data to be collected and studies needed to complete an Environmental Impact Statement in accordance with these Regulations;
 - (b) Undertake a preliminary impact analysis and Environmental Risk Assessment which will be updated as the Environmental Impact Assessment proceeds;
 - [(c) Identify [potentially affected] Stakeholders in accordance with [the applicable] Standards and taking into consideration the Guidelines;]
 - (c) bis Engage with [potentially affected] Stakeholders, and in accordance with [Regulation 93 ter.,] Standards and taking into consideration the Guidelines;
 - (d) Identify and evaluate feasible alternative means of carrying out the project that will be [further] examined in the Environmental Impact Assessment;
 - (e) Use the best available science and scientific information and, where available, relevant traditional knowledge of Indigenous Peoples and local communities;
 - (f) Identify terms of reference for the Environmental Impact Assessment; and
 - (g) Prepare a report on the outcomes of scoping described above, including the terms of reference ("Scoping Report").
4. The applicant or Contractor shall consult on the Scoping Report, with all States and Stakeholders in accordance with Regulation 93 bis [before submission for approval].
5. The Commission shall consider a Scoping Report submitted in accordance with this Regulation, and taking into account the consultation submission received under Regulation 93 bis (8), the applicant or Contractor's written response prepared under Regulation 93 bis (9), any additional information provided by the Secretary-General, and in accordance with [the applicable] Standards and taking into consideration the

Guidelines. Based on this review, the Commission shall either approve a Scoping Report, disapprove it or make recommendations to the applicant or Contractor under paragraph 7.

6. The Commission may recommend that the applicant [or Contractor]:
 - (a) revise the preliminary Environmental Risk Assessment, terms of reference or other aspects of the Scoping Report;
 - (b) Submits the report for further consideration; or
 - (c) Further consults under Regulation 93 bis on any revised Scoping Report, particularly if the recommendations are likely to lead to a Material Change in the Scoping Report.
7. The applicant or Contractor must obtain the Commission's approval of the Scoping Report under paragraph 6 before proceeding with the next steps of the Environmental Impact Assessment pursuant to Regulation 47.

Comments

- Several proposals were received to refine this draft regulation, and reallocate elements to the Annex on Scoping Report. The text thus contained significant mark-up. For the sake of clarity, the draft regulation has been placed in a clean version. It is now renumbered to draft regulation 47 bis.
- It has been suggested to replace draft regulation 47 bis with draft regulation 47, and delete draft regulation 47. Another suggestion has been to change the current order, and interchange draft regulation 47 with draft regulation 47 bis. Draft regulation 47 bis. concerns Scoping, and according to draft regulation 46 (4), the Scoping Report is the first step of the EIA, and the EIA is the second step.
- At the negotiations during the twenty-eight session, most support were provided for applying the alternative version in relation to the Environmental Impact Assessment Scoping Report. Furthermore, the Informal Drafting Group on restructuring the Environmental Impact Assessment Process regulations of Section 2, has focused on utilizing the alternative version. This version has been updated and include those proposals received from the Informal Intersessional Working Group on a Standardized Approach for Stakeholder Consultation. Amendments to paragraphs 3. (c) and (c) bis., 4 (l), 4 (m), 5, 6, 7 and the minor textual correction to paragraph 8, reflect the input from the group.

We generally think this revised draft is an improvement. The steps for Stakeholder consultation seem clearer and inclusive – i.e. now:

- Pursuant to paragraph (3), an applicant will engage with a sub-set of the most affected Stakeholders proactively
- Pursuant to paragraph (4), then the applicant (and not the ISA, as was suggested in the previous draft) will conduct a wider Stakeholder consultation - open to all - on the scoping report.
- Pursuant to paragraph (5), finally the LTC will make its decision based on all reports, as well as the inputs received from the consultations.

We would however prefer **sub-paragraph (3)(c bis)** to require 'consultation' with this sub-set of stakeholders rather than the more ambiguous 'engagement', as is currently drafted.

Sub-paragraph (3)(e) relating to Best Available Scientific Information and use of traditional knowledge reiterates 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 scoping process, and so we think does not need duplicating here.

Paragraph (5) contains an incorrect cross-reference at the end. It should refer to paragraph (6), not (7)

Again, it is frustrating that language proposed by the **Intersessional Working Group on Underwater Cultural Heritage** – which we support in principle - has not been reflected in this Consolidated Text.