

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 48 ~~Alt.~~

Environmental Impact Statement

1. An applicant or Contractor, [as the case may be.] shall prepare an Environmental Impact Statement in accordance with this Regulation, [Annex IV, the applicable Standards and taking into account Guidelines]. [The] [Such] [an] Environmental Impact Statement [will] [shall] be considered by the Authority in accordance with Part II or Regulation 57, [which include a consultation with States and Stakeholders on the Environmental Impact Statement, by the applicant or Contractor and in accordance with Regulation 93 bis], and is required for an application for a Plan of Work pursuant to Regulation 7(3)(d).

2. The Environmental Impact Statement shall document and report the results of the Environmental Impact Assessment carried out in accordance with Regulation 47 ~~ter~~ and shall provide the [International Seabed] Authority, its member States and other Stakeholders with [unambiguous] [clear] documentation of the potential Environmental Effects based on [the Best Available Scientific Information,] Best Environmental Practices, [and Best Available Techniques,] and Good Industry Practice [on which the Authority can base its decision, and any subsequent approval that may be granted].

2.bis. The applicant or Contractor shall [endeavour to] engage with potentially directly affected Stakeholders, and in accordance with [Regulation 93 ter] applicable Standards, and taking into consideration Guidelines, during the development of the Environmental Impact Statement.

[2.ter. The applicant or Contractor shall consult with all States and Stakeholders in accordance with Regulation 93bis on the Environmental Impact Statement before submission for approval.]

3. The Environmental Impact Statement shall be in a form prescribed by the Authority in [Annex IV] and the [applicable] [relevant] Standard and [in accordance with the relevant][taking into consideration the applicable] Guidelines, {and shall}:

(a) Detail the results of the Environmental Impact Assessment including the methodology used, [the sufficiency of information] and evaluation of the identified Environmental Impacts;

(b) Demonstrate that the proposed Exploitation is in accordance with all relevant environmental Standards and the Authority's environmental objectives and [taking into consideration] [in accordance with the requirements of] the relevant Regional Environmental Management Plan, [environmental baseline data] as well as any additional objectives as set by the Contractor and any results of the performed Test Mining Study, where applicable;

(c) ~~[Describe engagement and consultations undertaken and] identify substantive [and relevant] comments received through public consultation [with all States and Stakeholders] on the Environmental Impact Assessment and [include the written response prepared under Regulation 93bis(9); explain how [such] [each] comments have been incorporated or otherwise addressed,~~

~~[(c) bis Demonstrate it has conducted consultation with Stakeholders, in accordance with [Regulation 93 ter] [and Regulation 93 bis] and the applicable Standards, and taking into consideration the Guidelines.]~~

(d) Be prepared in clear ~~[and non-technical]~~ language and in an official language of the Authority together with an English-language version, where applicable,

~~[(e) Be peer reviewed by competent independent experts, before submission,]~~

~~[3. bis The applicant or Contractor shall [endeavour to] engage with potentially [directly] affected Stakeholders, and in accordance with [Regulation 93 ter] applicable Standards, and taking into consideration the Guidelines, during the development of the Environmental Impact Statement.]~~

~~[4. The Environmental Impact Statement shall, but not limited to, entail the following elements, which are described in greater detail in Annex IV[/ Standard]:~~

~~(a) An executive summary to provide an overview of the project and a summary of the content of the Environmental Impact Statement for non-technical readers,~~

~~(b) A description of the proposed project, [including information on location, associated activities, required infrastructure, mineral resources (type, size, shape, tonnage, volume, grade), technologies and (mining) equipment to be used, project scale overview (spatial, temporal, operational depth), transport and handling of materials, onsite processing, commissioning, construction and operating standards, design codes, health and safety aspects, workforce, decommissioning and closure, a timetable for the entire operation project proponents as well as a description of the report, including its scope and structure and overview of the stakeholder consultation process and consultation,]~~

~~[(b)bis A description of applicable national and international legislation, procedures and policies, and other applicable standards, principles and guidelines, for example the Convention including the 1994 Agreement relating, relevant rules from the International maritime Organization and International Law in general.]~~

~~[(b)ter A summary of the Commission's recommendations on the scoping report and the agreed terms of reference for the applicant's Environmental Impact Assessment submitted to the Commission, and justification for any deviation either from those terms of reference, or from the Commission's recommendations,]~~

~~(c) [A description of] Methodologies, [for collecting and analyzing baseline and 'test mining' data and assessing the potential environmental impact and Environmental Effects from the proposed operations and alternatives considered,]~~

~~(d) A description of the existing oceanographic, physiochemical and geological environment,~~

~~(e) A description of the existing biological environment, [including information on prior research/Exploration studies, biological properties and communities and ecosystem that could be impacted by proposed activities,]~~

~~(f) A description of the socioeconomic and sociocultural environment including existing human activities, [on fisheries, marine traffic, submarine cables, tourism, ongoing scientific research, sociocultural use, and sites of cultural or historical significance,]~~

~~(g) An assessment of [environmental] impacts on the physical, chemical and geological environment and proposed Mitigation, [including description of the impact source, potential impact categories and pathways, receptors and impacts, any potential Cumulative Environmental Effects, unavoidable residual impacts and effects that may remain, and the extent to which any potential impacts and effects may occur in areas under a State's national jurisdiction.]~~

~~(h) An assessment of [environmental] impacts and Environmental Effects on the biological environment and proposed Mitigation, [including description of the impact source, potential impact categories and pathways, receptors and impacts, any potential Cumulative Environmental Effects, unavoidable residual impacts and effects that may remain, and the extent to which any potential impacts and effects may occur in areas under a State's national jurisdiction.]~~

~~(i) An assessment of impacts on the socioeconomic and sociocultural environment and proposed Mitigation, [including description of potential impact categories and pathways and impact identification of existing use (fisheries, marine traffic, submarine cables, tourism, ongoing scientific research, sociocultural use, area-based management tools, sites of cultural or historical significance, ecosystem services), impact on gender and residual impacts.]~~

~~[(i bis) An assessment of any uncertainties associated with assessments detailed in paragraph 4 subparagraphs (g), (h), and (i) under this regulation, including the implications of those uncertainties for the Environmental Impact Assessment and its findings, measures taken to reduce uncertainties in those findings to as low as reasonably practicable and manage any remaining uncertainties.]~~

~~(j) An [description outline] of hazards arising from natural, accidental and discharge events, for example related to extreme weather, natural hazards, accidental events, maritime safety, emergency response,~~

~~(k) An [description outline] of waste management,~~

~~(l) A summary of key issues in the Environmental Impact Statement and how they will be addressed in the Environmental Management, and Monitoring Plan and Closure Plan,~~

~~(m) [An overview of the downstream supply chain A description of responsible product stewardship] related to the intended use of the mineral bearing ore once it leaves the [Contract] Area, [including how the Contractor will minimize effects on health, safety, environmental as well as socioeconomic and sociocultural impacts,]~~

~~(n) A [description summary] of [the nature, extent, participation and outcomes of consultations] [that have taken place with Stakeholders, and how their comments have been addressed in the environmental impact assessment, and stakeholder engagement and methods.]~~

~~[(o) A summary of the study team outlining the people involved in the environmental impact assessment studies and in writing the Environmental Impact Statement.]]~~

5. The Environmental Impact Statement of every project, including any revisions, [shall] be [made] available on the [official website of the International Seabed] Authority's website. [by the Secretary General] in the interests of transparency of the whole process in accordance with Regulation 92.

Comments

- During the twenty-eight session, most support were provided for applying the alternative version of draft regulation 48 and the informal drafting group also focused on utilizing the alternative version. Based on the above, the original version of draft regulation 48 has been omitted, and the alternative version is now the new draft regulation 48.

- The Informal Drafting Group suggested moving the content of para 4 of regulation 48 Alt. to Annex IV. Please note the outcome of the Informal Drafting Group, in particular the document entitled [*“Annex III – Outline of merging alignment task”*](#) as this document diligently explains, and lays out the specifics of, the proposed replacements.
- Regulation 48 has also been amended to reflect the input from the “Informal Intersessional Working Group on a Standardized Approach for Stakeholder Consultation”. Amendments to paras 1 and 3 (d) and the insertion of 3 (d) bis and 3 bis reflect the input from the group.
- The Informal Drafting Group on revising the EIA Process suggests moving the content of paragraph 4 of draft regulation 48 Alt. to Annex IV as stated in Annex 3 of the Intersessional Working Group’s report ([*“Annex III – Outline of merging alignment task”*](#)).

We welcome the streamlined version of DR48, noting that the deleted points will be covered in Standards and/or Annexes to the Regulations. In this regard, it is helpful now to have cross-reference in **paragraph (1) to Annex IV**, which sets out the template and required content for the EIS.

In **paragraph (2)** we think the term ‘*Environmental Effects*’ may benefit from additional words ‘...of the proposed Plan of Work or modification to an existing Plan of Work’. We note that there may similarly be some words missing in the defined term of ‘Environmental Effects’ in the Schedule. We also repeat our general comment that the Regulations in this Part IV may benefit from review to see whether each paragraph should refer to ‘*Environmental Impacts*’, ‘*Environmental Effects*’, or both.

In **sub-paragraph (3)(b)** the reference to Exploitation being in accordance with ‘*environmental baseline data*’ seems misplaced. Baseline data comprise evidence as to the environmental conditions before Exploitation commences, to inform monitoring of how these conditions change due to Exploitation. The ISA should be regulating to ensure that the baseline data are adequate in coverage as well as in data confidence and statistical robustness (according to specifications set out in Standards). This is covered to some extent in DR46(3)(a) but needs to be underpinned by more detail in a Standard. We note that the reference to results of Test Mining Study appear optional. This may need to be more prescriptive depending on the policy choices for how test mining is regulated. We suggest deleting the qualifiers “any” and “where applicable” from the final sentence.

In **sub-paragraph (3)(c)**, we agree with the deletion of the terms ‘relevant’ and ‘substantive’ which are very subjective in nature. We consider it would be better practice, and not unduly onerous, for *all* comments received to be appended to the EIS. Where a Contractor considers them too lacking in substance or relevance to warrant a response, they can simply record this in the EIS without needing to take further action. We wonder if **sub-paragraph (3)(c bis)** can be deleted as duplicative of (3)(c)?