

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 bis**

**[New Environmental Impact Assessment and Revised Environmental Impact Statement] / [Revision for change or new or increased effect or risk]**

1. If a Contractor becomes aware that any of the circumstances listed in paragraph 2 below have not been addressed by either an Environmental Impact Assessment or an Environmental Plan, it shall promptly notify the Secretary-General in writing, including:
  - (a) a detailed description of the circumstance;
  - (b) details of the potential effect on or risk to the Marine Environment; and
  - (c) details of any Environmental Impact Assessment conducted or to be conducted, or proposed modification to the Environmental Plans.
2. The relevant circumstances for the purpose of paragraph 1 are:
  - (a) A change to an existing Plan of Work is proposed which is likely to [significantly] increase the adverse Environmental Effects [or risks] caused by the activities, and is not covered by Regulation 57(3);
  - (b) Environmental monitoring demonstrates that impacts significantly exceed the impact predictions made in the Environmental Impact Statement;
  - (c) An activity described in the Plan of Work is predicted to [consistently and persistently] exceed the impact thresholds set out in the Standards on environmental thresholds [in a manner that results in demonstrated non-compliance with these Regulations];
  - (d) An applicable Standard, activity or predicted impact has not already been addressed by an Environmental Impact Statement; or
  - (e) A review of existing Environmental Impact Assessment or Environmental plans is otherwise deemed necessary by the Commission or Council, in accordance with applicable Standards and taking into consideration the Guidelines, including following its review of a Contractor's activities contained in an annual report submitted pursuant to Regulation 38 or review of a Plan of Work pursuant to Regulation 58.
3. The Secretary-General shall transmit the information received from the Contractor under paragraph 1 above to the Commission. The Commission shall assess the information and determine whether the Contractor shall undertake an Environmental Impact Assessment and [propose] a revised Environmental Impact Statement; or other modification to the Plan of Work in accordance with Regulation 57.

4. For the avoidance of doubt, any Environmental Impact Assessment and revision to an Environmental Impact Statement conducted pursuant to this Regulation shall be subject to the full processes prescribed in these Regulations.

#### Comments

- During the twenty-eight session, most support were provided for applying the alternative version of draft regulation 48 bis. Furthermore, the Informal Drafting Group on restructuring Section 2, has focused on utilizing draft regulation 48 bis Alt. instead of draft regulation 48 bis.
- One delegation submitted proposals to insert a new paragraph 1 (making the previous paragraph 1 the new paragraph 2) and also insert new paragraphs 3-5.
- Draft regulation 48 bis. has also been amended to reflect the input from the “Informal Intersessional Working Group on a Standardized Approach for Stakeholder Consultation”. The insertions of paragraphs 2 and 3 reflect the input from the group.
- Significant streamlining has been conducted to e.g. avoid the draft regulation inappropriately overlapping and undermining other regulations that interrelates with this matter. The revised draft regulation has thus been placed in a clean version since it was overwritten.

We are generally supportive of this provision and appreciate the streamlining attempt.

A small drafting point: **paragraph (1)** should refer to 'Environmental Plans' (plural) to reflect correctly the defined term.

We have 3 issues with **sub-paragraph (1)(c)**: (i) We presume the Contractor is not required to report details of the EIA that it conducted before (whose EIS is already on the ISA's files). Adding the word 'new' before EIA would help clarify. (ii) If this provision relates to a new EIA, we query how this could already have been 'conducted' without the ISA already knowing and having been involved in the scoping process? (ii) If there is a proposed modification to the Environmental Plans, this falls under DR57 and it is not helpful to create a duplicative and conflicting process here. To resolve these three issues we suggest sub-paragraph (1)(c) should read “*details of any new Environmental Impact Assessment ~~conducted or~~ to be conducted, ~~or proposed modification to the Environmental Plans.~~*”

We think **sub-paragraph (2)(a)** should be deleted. Every proposed modification to a Plan of Work should be reported and assessed pursuant to DR57, which sets out the process for determining how that proposal is managed, including whether or not the Contractor is required to carry out a new EIA.

In **sub-paragraph (2)(c)** we would delete the proposed phrase ‘*consistently and persistently*’ and “*in a manner that results in demonstrated non-compliance with these Regulations*”. It seems to us, an activity in the Plan of Work could be predicted to cause a one-off Incident which far exceeds predicted impacts and requires new EIA to assess management options – and that would not be “consistent or persistent”. Furthermore, whilst it is hard to know without sight of the (very important) thresholds Standards which have yet to be drafted, it seems to us that these Standards can themselves establish in more operational detail what are absolute no-go thresholds, what are warning signs, etc. So sub-paragraph (2)(c) should refer simply to an impact that breaches the Standard and avoid subjective language about the degree of the breach.

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.