

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 3

Environmental Management and Monitoring

Comments

- A conceptual discussion was held during the second part of the twentyninth session in respect of environmental management and monitoring. A restructuring proposal was presented and welcomed by a significant number of delegations. Also, many delegations welcomed further intersessional work in respect of streamlining and updating the substance of this new section 3.
- Significant proposals have been provided for further restructuring and streamlining, and the text has been updated and kept in a clean format due to the extensive mark-up. Reference is in particular made to the joint proposal on section 3 that was submitted by Norway and Pew during the second part of the twenty-ninth session and in particular the joint proposal of the intersessional working group on Environmental Management and Monitoring that was delivered ahead of the first part of the 30th session.

Regulation 49

Environmental Management and Monitoring

1. A Contractor shall [continuously][continually] monitor and manage the [Environmental Impacts and] Environmental Effects [and risks] of its activities on the Marine Environment[, in accordance with the Environmental Management and Monitoring Plan and the Closure Plan].
2. A Contractor shall monitor the [Environmental Impacts and] Environmental Effects [and risks] of its activities on the Marine Environment [to determine whether they are having or are likely to have harmful effects on the Marine Environment] to assess compliance with the [Environmental Impact Assessment and] Environmental Impact Statement and Environmental Management and Monitoring Plan and Closure Plans[and to avoid risk of serious harm to the Marine Environment]. Such monitoring shall include a comparison of monitoring data against environmental threshold values and a comparison between monitoring data and the effects predicted in the Environmental Impact Statement, to measure, analyse, and document the actual effects on the Marine Environment.
3. [Continuous][Continual] monitoring shall be conducted until completion of a Closure Plan.
4. The Contractor shall Mitigate and manage Environmental Impacts and Environmental Effects [and risks] to ensure that these are consistent with the [threshold values,] Standards and the Exploitation Contract and its schedules [including the predictions made in the Environmental Impact Statement].
5. If the Contractor identifies harmful effects on the Marine Environment that breach the terms and conditions of its Exploitation Contract or the relevant rules, regulations and procedures of the Authority, including the applicable Standards, [taking into [account

relevant)[considering the Applicable] Guidelines,] the Contractor shall determine whether the matter is an Incident or Notifiable Event and proceed in accordance with Regulation 33 or 34.

We generally find the streamlined version is much more readable and actionable and thank Norway for their proposal and hard work on these provisions.

In **paragraphs (1) and (3)** do not have a strong opinion regarding “*continual*” vs “*continuous*”, as we imagine certain kinds of monitoring will need to be continuous (i.e. 24/7), while others would be continual (i.e. at repeated intervals).

We suggest retaining in **paragraph (1)** both “*Environmental Impacts*” and “*Environmental Effects*”. The objective of the EMMP should be monitor both the immediate physical or chemical changes that activities may cause, i.e. an action (e.g. animals crushed, substrate removed) - “Impacts”; as well as the consequences of those impacts in the Marine Environment i.e. a result (e.g. fauna mortality, habitat loss, species extinction) - “Effects”.

In **paragraph (2)** we suggest deleting the reference to EIA and EIS, as these contain assessments, predictions and proposals, not binding requirements with which the Contractor can comply. The EMMP (informed by the EIA/EIS) is the document that contains the relevant binding commitments, and forms part of the Plan of Work. The provision could also be phrased as ‘*the EMMP or the Closure Plan, as the case may be*’, to clarify that these may not both be applicable simultaneously but are generally applied in sequential order: EMMP during pre-production and Commercial Production, and Closure Plan afterwards during the closure phase.

In paragraph (2), the bracketed text “*and to avoid risk of serious harm to the Marine Environment*” could also be deleted. This would already be covered by the adherence to the EMMP, which in turn would be designed to meet the ISA’s Standards that set thresholds for acceptable and unacceptable levels of harm, which will include ‘serious harm’ but we imagine also other graduated thresholds pre-serious harm.

As a general comment, many of the monitoring provisions focus on **monitoring environmental thresholds**. We believe the aim is to prevent serious / irreversible harm well before it occurs (not to watch it happen and then respond). There are different ways for the thresholds to achieve this aim. One option would be for every threshold to be set conservatively (in which case breach of the threshold is the trigger to act). Another option is for the threshold to be set at the ‘no-go’ breaking point (in which case contractors should be tasked in the EMMP to set monitoring milestones significantly before the threshold, with alarms going off if and when the impacts start progressing upwards towards the threshold). If the Council could decide on its preferred approach and provide instructions to the Thresholds Working Groups on this, it would help ensure a consistent approach. The DRs on monitoring and enforcement could also then correctly refer to the relevant approach. This will avoid inadvertently having a very risky compliance regime i.e. where the DRs focus on breach of a threshold as a trigger to act, but the thresholds are set at the level of irreversible and serious harm – meaning management action is triggered too late.

In **paragraph (5)** we suggest tweaking the phrasing to avoid sounding like the Contractor has discretion to choose whether to follow the ‘Notifiable Event’ or the ‘Incident’ reporting and response process. Which process is applicable must be an objective assessment dictated by the nature of the breach.