

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 50 ter**

**Environmental Management System**

1. A Contractor shall have in place, implement and maintain an Environmental Management System in accordance with the relevant Standard taking into account the relevant Guidelines, for the purpose of monitoring, [controlling,][managing,] and continuously improving its environmental performance, including through implementing the Environmental Management and Monitoring Plan.

2. The Environmental Management System shall be detailed in the Environmental Management and Monitoring Plan in accordance with Regulation 7 (3) bis (h). An Environmental Management System shall refer to the following iterative process to:

(a) Establish environmental objectives and processes necessary to deliver results in accordance with the Authority's environmental objectives in the Contract Area, including those reflected in the applicant's Environmental Management and Monitoring Plan and the relevant Regional Environmental Management Plan;

(b) Implement and monitor the processes as planned and report the results to the Secretary-General; the reporting is reflected in the delivery of the annual reports pursuant to Regulation 38, including details of any accidents or incidents and notifiable events;

(c) Evaluate the performance of the environmental management system by fulfilling the requirements in Regulation 52 and by seeking confirmation of the [annual] assessment through an independent audit, undertaken every three years by a recognized and accredited international or national organization, in accordance with applicable Standards;

(d) Take actions to continually improve the performance of the Environmental Management and Monitoring Plan and report these actions in the next annual report submitted to the Secretary-General pursuant to Regulation 38.

3. The Contractor shall assess and maintain the currency and adequacy of [its] Environmental Management System [An Environmental Management System shall be subject to continual and systematic improvement] during the term of its Exploitation Contract, including [through frequent] management review [and audit] under Regulation 50 bis (4), performance assessment under Regulation 52[, or any modification to the Plan of Work under Regulation 57]. In conducting such an assessment, the Contractor shall assess the ability of the Environmental Management System to implement effectively the Environmental Management and Monitoring Plan.

4. [The Contractor shall ensure that its Environmental Management System shall be reviewed and undergo periodic audits by an independent recognized and accredited international or national organization, in accordance with applicable Standards. The

results of the audit and any changes made to a Contractor's Environmental Management System shall be included in the Contractor's annual reports.

5. A Contractor shall, in its annual reports and in the performance assessment of the Environmental Management and Monitoring Plan under Regulation 52 demonstrate the continual and systematic assessment of the Environmental Management System and its improvement, including through the output of management reviews and audits under paragraphs 3 and 4.

<b>Comments</b>
<ul style="list-style-type: none"><li>• A new para 2 has been proposed inserted to better align with international standards dedicated to the Environmental Management System, such as ISO 14001:2015).</li><li>• The draft standard and guidelines on the development and application of environmental management systems (ISBA/27/C/7) is recalled in respect of the continued discussions of this draft regulation.</li></ul>



We again appreciate the streamlining of this provision, and the drafting clarity. The reference to a Standard on EMS in **paragraph (1)** is welcome, as is the clear indication that the purpose of the EMS is to implement the goals and objectives set forth by the EMMP. The EMS is crucial to the EMMP commitments being met, and the ISA Standard should set some minimum standards to ensure Contractors have appropriate systems in place, and so that the LTC has criteria against which to review the EMS at application stage.

We have no specific objection to the content of **paragraph (2)** but query its necessity. Most of the contents seems already covered by paragraphs (1) and (3), and the Standard would also cover more detailed requirements.

We support the inclusion of **paragraphs (3), (4) and (5)** which create an effective feedback loop between the Contractor, independent auditors and the ISA to ensure the effectiveness of the EMS throughout the term of the contract. We believe the EMS should be subject to frequent management review and so would propose taking that phrase out of brackets in paragraph (3). Similarly, the reference to audits could also be taken out of brackets, as they will be an important method of assessing the effectiveness of the EMS.

While we welcome the further elaboration on how auditors can be selected, i.e. that they should be 'independent recognized and accredited international or national organization'; **how external, independent experts are identified**, defined and selected, is a cross-cutting issue, and will need to be made consistent throughout the Regulations. We suggest a standardised process and objective criteria, which are included in an ISA policy, Standard, or Annex to the Regulations.