

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 51

Compliance with the Environmental Management and Monitoring Plan

1. The Commission shall review the data submitted by the Contractor [monthly/annually] pursuant to regulation 50 bis (2) [upon receipt].
2. The Contractor shall review the implementation of the Environmental Management and Monitoring Plan on a [regular] basis. Such review shall include:
 - (a) The efficacy, timeliness, relevance and accuracy of flow of information and data derived from monitoring the Exploitation activities and its impacts on the Marine Environment, and Impact Area, [including the Mining Area]; and
 - (b) The accuracy of the findings of the Environmental Impact Assessment as set out in the Environmental Impact Statement.]
3. If the Commission considers that [the environmental] monitoring data submitted pursuant to regulation X(2), or its quality, indicates that the Contractor does not meet its obligations, the Commission shall refer the matter to the Compliance Committee without undue delay. The Secretary-General shall notify the Contractor, the Sponsoring State, and the Council that the matter has been referred.
4. Where, as the result of the review by the Commission under Regulation 52 paragraph 7, the Commission concludes that a Contractor has failed to comply with [the terms and conditions of][any commitment in] its Environmental Management and Monitoring Plan, the Commission shall refer the matter to the Compliance Committee. The Secretary-General will notify the Contractor, Sponsoring State and Council that the matter has been referred.
5. The [Compliance Committee] shall assess any matter referred to it under this Regulation paragraph 4 and 5 and take any necessary actions consistent with regulation 102 and 103. [This may include:
 - (a) Requesting the Commission to provide further information as to the facts and circumstances giving rise to the referral of this matter;
 - (b) Convening, with the support of the Secretary-General, a process to liaise with the Contractor [and to agree any corrective and timebound action];
 - (c) Exercising the powers conferred upon the Committee under paragraph 1 of Regulation 103; or,
 - (d) Inviting the Council's attention to the matter.]

We recommend the change the **title of DR51** to “*Assessment of Compliance with Environmental Management and Monitoring Obligations*”, as this regulation is about the LTC and Compliance Committee’s roles and responsibilities to oversee compliance not the responsibility of the Contractor to comply.

In **paragraph (1)**, we are unsure whether the ‘*monthly/annually*’ wording is referring to the intervals of Contractor reporting, or referring to how regularly LTC should review the reports? If the former, this wording is not necessary and can be deleted – as it is covered by DR50 bis. If the latter, it seems inappropriate for ISA to require real-time data and then only look at it periodically. Hence we support the ‘*upon receipt*’ wording proposal. NB the Secretariat could in practice be a filter to receive and review daily a real-time data feed, and then responsible to submit periodic reports to the LTC as is proportionate and feasible in the circumstances.

Paragraph (2) seems duplicative of the requirements in DR50(4). We would therefore suggest its deletion here.

Regarding **paragraph (3)**, we support the requirement for the LTC to consider the ‘quality’ of the environmental data and note there will be a need to ensure that **data quality requirements** are elaborated somewhere else in the regulations. This can be done in Annex VII and/or a Standard. Without setting clear rules for data quality, the LTC may struggle to lawfully declare that reports are inadequate on data quality grounds. We believe the reference to “*regulation X*” should be to “*regulation DR50 bis(2)*”.

In **paragraphs (4) and (5)**, we welcome the reference to the Compliance Committee, which would be the appropriate body to hear any non-compliance issues from the LTC and then assess the matter further. In paragraph (4), we query if the term ‘*terms and conditions*’ is the appropriate language and consistent with other regulations about the EMMP. We prefer ‘*commitments*’ as more reflective of the content of an EMMP.

On **paragraph (5)**, we believe the cross reference to DR103 is sufficient, and the sub-paragraphs could be deleted. While the sub-paragraphs may be helpful as an indicative list of actions that the Compliance Committee could take, specifying specific actions here risks creating a separate track for compliance issues arising from a breach of an EMMP. We believe all breaches of a Plan of Work or contract should be dealt with via the same consistent procedures and powers (under DR103).