

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 52

Performance assessments of the Environmental Management and Monitoring Plan

1. A Contractor [In addition to the continual internal assessment required pursuant to regulation 50(4), a][A] Contractor shall [also periodically] conduct [or commission a formal] performance assessments of its Environmental Management and Monitoring Plan, [in accordance with this Regulation[, the applicable Standard and taking into consideration the applicable Guideline]]. In conducting such a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall [, using an Independent Auditor,] assess:

(a) The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto;

(b) The conformity of the plan with [the objectives and] measures included in the applicable Regional Environmental Management Plan [including any revisions or updates to the Regional Environmental Management Plan that may be adopted from time to time,];

(c) The accuracy of the findings of the Environmental Impact Assessment as set out in the Environmental Impact Statement[, upon which the Environmental Management and Monitoring Plan was based];

(d) That any relevant changes in knowledge, technology, mining patterns, monitoring techniques and detection capabilities, [that were not taken into account in developing or previously updating the Environmental Management and Monitoring Plan which are relevant,] are reflected [according to Good Industry Practice, Best Available Techniques and Best Environmental Practices];

(e) The reports of the Environmental Management and Monitoring Plan, as well as the comments and evaluation from the Commission to the reports in accordance with Regulation 48 above, and any comments received by the [Commission/Compliance Committee] in accordance with Regulation 51.

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan and shall occur at least every 24 months.

3. An [additional] *ad hoc* performance assessment [under this Regulation] may [also] be requested by the [Compliance Committee] following:

(a) An Incident [or Notifiable Event];

(b) Issuance of a compliance notice under Regulation 103; or

(c) When deemed necessary by the [Committee following investigation into third- party information submitted to the [Authority] or following investigation into matters referred by the Commission under regulation 51[that results in sufficient evidence to suggest a breach of compliance has occurred].

[3.bis. The Contractor shall engage with [potentially directly affected] Stakeholders, and in accordance with [Regulation 93 ter], Standards and taking into consideration Guidelines during the development of the performance assessment;]

4. A [Contractor] shall submit the results of a performance assessment in a performance assessment report to the Secretary-General in accordance with, and in the format set out in, the applicable Standards and taking into consideration Guidelines[, and shall, as a minimum contain the following information:

(a) information regarding the period applicable to the performance assessment;

(b) the scope of the assessment;

(c) the procedure used for the assessment;

(d) the evaluation criteria used during the assessment.]

5. [Before submission of the performance assessment report, the Contractor shall conduct a consultation on a draft performance assessment report in accordance with Regulation 11.]

6. The Commission shall review the performance assessment report in accordance with the applicable Standard and taking account of the Guidelines. [within 60 Days of receipt of such report and comments]. The Commission may, where necessary and appropriate, consult external competent, independent experts in its review of the performance assessment.

7. Where the Commission upon review of the report, considers the performance assessment to be unsatisfactory or the report submitted to be inadequate, the Commission may, after providing the Contractor with a reasonable opportunity to address any inadequacies, require the Contractor to:

(a) Submit any relevant supporting documentation or information requested by the Commission including a revised report; or

(b) Appoint, at the cost of the Contractor, an independent competent person to conduct the whole or part of the performance assessment and to compile a report for submission to the Secretary-General and review by the Commission.

8. [Where, as a result of paragraph 7 above, a revised assessment and report is produced, a new consultation in accordance with Regulation 93 bis shall be conducted on the revised assessment.]

9. Where, as the result of a review by the Commission under paragraph 6 above, the Commission concludes that the Environmental Management and Monitoring Plan is determined to be inadequate in any material respect, the Commission shall require the Contractor to deliver a revised Environmental Management and Monitoring Plan, taking into account the findings and recommendations of the Commission. A revised plan shall be [treated the same way as a modification of a Plan of Work pursuant to Regulation 57 mutatis mutandis].

10. The Commission shall report annually to the Council on performance assessments [conducted pursuant to this Regulation,] and any action taken pursuant to paragraphs 6 to 9. Such report shall include any relevant recommendations for the Council's consideration, [and] shall be published on the Authority's website.

We support the bracketed text in paragraph (1) which clarifies that DR52 is referring to the periodic wholesale formal assessment, with consultation, which is reported to the ISA, and this is in addition to DR50(4)'s requirement for continual assessment.

We would like to see reflected for discussion the proposal made by the Intersessional Working Group on **Underwater Cultural Heritage** that new discoveries of UCH should be added as a relevant consideration in paragraph (1)'s list.

Regarding **paragraph (2)**, we note that Annex VII needs to mirror this obligation by specifying that the dates of EMMP performance assessment are one of the required contents of the EMMP.