

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 53 ter

[Restriction on] Mining Discharges

1. A Contractor shall not [introduce any Mining Discharge] ~~[dispose, dump or discharge]~~ into the Marine Environment ~~any Mining Discharge~~, [except where such [Mining Discharge] disposal, dumping or discharge is permitted in accordance with:]

(a) The assessment framework for Mining Discharges as set out in the [applicable] Standard;

(b) The [Plan of Work and] Environmental Management and Monitoring Plan; ~~and~~

~~(c) [Relevant internationally agreed rules, standards and recommended practices and procedures, [as set out in the applicable Standard] [and established by the International Maritime Organization, where applicable].]; and~~

~~[(de) Alt. These Regulations.]~~

2. Notwithstanding paragraph 1, a Contractor may make such ~~disposal, dumping or discharge~~ Mining Discharge into the Marine Environment where it is necessary for the safety of the vessel or Installation or the safety of human life, provided that such ~~disposal, dumping or discharge~~ Mining Discharge is conducted so as to prevent harm to human life and to the Marine Environment. ~~If h~~Harm to the Marine Environment occurs as a result of disposal, dumping or discharge, the Contractor shall, [after ensuring] [upon] safe working conditions [are in place] [being restored,] monitor, mitigate and [remediate] the impacts of such harm, and shall report forthwith about such disposal, dumping or discharge to the Authority. [Such disposal, dumping or discharge shall constitute a notifiable event under Regulation 34 and Appendix 1.]

~~[3. The disposal, dumping or discharge into the Marine Environment of any Mining Discharge that is not permitted in accordance with paragraphs 1 [and 2] above is considered an unauthorized Mining Discharge and constitutes a Notifiable Event under regulation 34 and Appendix 1.]~~

[4. A Contractor shall keep a register of mining discharges, to be updated immediately after any discharge event where possible, that shall be reported annually to the Authority under Regulation 38, as part of the [Contractor's] [mandatory] annual report that must be prepared throughout the operation.]

[4. Alt. The applicant or Contractor must continuously monitor its Mining Discharges and maintain a register that is reported to the Authority at least weekly in addition to the mandatory annual report pursuant to Regulation 38.]

In relation to this DR 53ter, generally, we note that the **definition of 'Mining Discharge'** in the Schedule is '*any sediment, waste or other effluent directly resulting from Exploitation including shipboard or Installation processing*

immediately above a mine site '. We are not quite clear from this if it would include seawater that has been 'cleaned' to a certain degree. What type of granularity represents '*sediment*'? What if the substance to be discharged is thoroughly cleaned water, but of a different temperature or chemical composition? We wonder if this needs to be clarified in the definition (or in a Standard to which the definition can refer). We also see that the phrase 'mining discharge' is used in paragraph (4) without capitalisation, denoting the defined term is not meant. If this is not purposeful, it should be remedied.

We agree with the deletion of **sub-paragraph (1)(c)**. We were confused by the reference to international rules and standards that would apply to mining discharges. IMO treaties exclude mining discharges. It is the jurisdiction of the ISA to regulate this (via these Regulations). The ISA may wish to take into account precedents from other bodies or practices in developing its own rules but cannot rely on other organisations to fulfil the mandate given to the ISA by Article 145 of UNCLOS.

We also consider that the **dumping situation envisaged in paragraph (2) should be classified as an Incident**. An otherwise prohibited disposal into the Marine Environment deemed necessary for the safety of the vessel or human life, suggests a serious emergency situation, and as such should be classified as an Incident. This is important to ensure that relevant reporting and follow-up regulatory actions take place. Otherwise this paragraph (2) envisions a situation in which a Contractor may determine for themselves that there was such serious threat to life or the environment, that an otherwise prohibited dumping of mine waste will take place - and this is neither considered a breach of the rules of the ISA, nor investigated by the ISA or followed-up in any way. We would therefore like to retain paragraph (3) with an amendment from 'Notifiable Event' to 'Incident'.

Regarding **paragraph (4)**, we would prefer the (Alt) paragraph, requiring a more regular reporting of Mining Discharges than the annual report. We understand that a Contractor should be continually monitoring the release of Mining Discharge in real-time and that return of waste from the mining operations to the ocean is likely to be one of the primary sources of environmental impact from Exploitation, so we do not see why that data should not be readily and regularly made available to the ISA, in its oversight capacity. This could be done in accordance with the provisions on Environmental Monitoring and the EMMP, so cross-reference to DRs 50 and 50bis may be useful here.