

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 54

Environmental Compensation Fund

Regulation 54

Establishment of an Environmental Compensation Fund

1. The Authority hereby establishes the Environmental Compensation Fund. Referred to as “the Fund” ~~[in the following]~~ [for the purposes of these Regulations].

2. The rules and procedures of the Fund shall be established by the Council on the recommendation of the Finance Committee before the [approval of a first Plan of Work for an Exploitation Contract] under these Regulations. ~~These~~ rules and procedures shall include, inter alia:

(a) ~~A mechanism for financing~~ [The requirements and modalities governing contributions to] the ~~Ffunds~~ in accordance with Regulation 56, including [modalities for] replenishment [of the Fund] upon disbursement;

[(a) bis The minimum size of the Ffund;]

(b) A description of how the ~~Ffunds~~ and any interest generated will be managed and by whom;

(c) ~~[The process for accessing the funds]~~ [Modalities for administering claims against the Fund, including determining entities eligible to access the Fund, which may include States, international organizations and private entities that have suffered damages, as well as the Authority];

(d) The type of damages and purposes eligible for claims against the ~~Ffunds~~ in accordance with Regulation 55;

(e) The standard of proof required for claims against the ~~Ffunds~~;

~~[(f) A policy on refunds of Contractor payments into the funds;]~~

[(f) Temporal scope of the funds];

(g) A process for determining disbursements ~~[or refunds]~~ from the ~~Ffunds~~; and

(h) The promotion of the participation of affected persons or other Stakeholders in decisions about disbursement of funds.}

3. The Secretary-General shall, in consultation with the Finance Committee, within 90 Days of the end of a Calendar Year, prepare an independently audited statement of the income and expenditure of the Fund for ~~[circulation to the members of the Authority]~~ [submission to the Assembly for their consideration, and to be made publicly available on the Authority's website].

We suggest using the **abbreviation ‘ECF’ rather than ‘the Fund’** given the different funds that the ISA does or will administer e.g.:

- the existing Partnership Fund (for funding scientific research and capacity-development projects),
- the proposed Common Heritage Fund (for equitable benefit-sharing),
- the required but not-yet-established Economic Assistance Fund (to compensate mineral-producing countries).

A general issue we have regards to the regulations about the ECF is that we are unclear **who would administer it**. Paragraph (2)(b) suggests that there may be external fund managers, but from paragraph (3) we glean it would be managed within the ISA. If the latter is the case, we are unclear from the Regulations which organs would have responsibility for which aspects. We also recall that *‘the Finance Committee of the ISA has 15 members, none of whom are full time employees of the ISA, nor appear experienced in asset management for a large fund’*.¹

The Suspense Document seems to suggest that **paragraph (2)** be moved to the relevant Standard. We disagree. Whilst the Standard can set out detailed rules and procedures related to the ECF, the regulations are the place to set parameters for those subsidiary instruments, which is what paragraph (2) does.

We generally support all the proposed amendments to paragraph (2), which we find offer improved clarify on requirements and modalities for accessing funds, and claimant types. We also strongly support that the **rules and procedures of the ECF need to be in place prior to the approval of the first Plan of Work**. At the point of an application for Exploitation, the LTC and the Council need to assess the applicant’s financial capabilities to deliver on the Plan of Work. This requires that the LTC and the Council know what the financial requirements are at that point, and also what aspects and amount would be covered by insurance, not at a later date after an application has already been approved.

We agree with the deletion of **original sub-paragraph (f)** as our understanding is that the ECF is like another form of insurance – it is loss spreading – so payment is premised on probability that some accidents may occur, but all contribute to ensuring the loss is covered. If this is correct, then refunds should not be made available – as payment into the ECF is simply the cost of maintaining this insurance. (Insurers do not refund money once the insured ceases operations). In relation to **new sub-paragraph (2)(f)**, it may be more precise to word this as: *“any time limits for claims against the funds”* - if that covers the intention behind the proposal?

In relation to paragraph (3), we support the proposed phrase *‘for submission to the Assembly for their consideration, and to be made publicly available on the Authority’s website.’* since we consider this to be a matter of public interest and so should be made publicly available.

¹ Wilde et al. (2023) Equitable sharing of deep-sea mining benefits: More questions than answers <https://www.sciencedirect.com/science/article/pii/S0308597X23000994>