

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.

**Part V**

**Review and modification of a Plan of Work**

**Regulation 57**

**Modification of a Plan of Work by a Contractor**

1. A Contractor shall not modify the Plan of Work annexed to an Exploitation Contract, except in accordance with this Regulation.

2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor and the Commission, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under Regulations 12 and 16, and before such Material Change is implemented by the Contractor.

[2 Alt If a Contractor wishes to modify a Plan of Work, it shall notify the Secretary-General. The Secretary-General shall [inform the Council and] transfer the request] to the Commission, to consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the applicable Standard. If the Commission considers that the proposed modification constitutes a Material Change, the Contractor shall seek the seek the prior approval of the Council based on the recommendation of the Commission under Regulations 12 and 16, and before such Material Change is implemented by the Contractor.]

3. Where the proposed modification under paragraph 2 may have a potential impact on the Environmental Management and Monitoring Plan or Closure Plan, [or the Environmental Impact Assessment, the Contractor shall endeavour to engage with potentially directly affected Stakeholders and in accordance with [DR X,] the Standards, and taking into consideration the Guidelines, during its preparation of the modified plans. The Contractor shall also conduct a consultation on such [the modified] plans [in accordance with regulation 93bis] [shall be dealt with in accordance with the procedure set out in Regulation 11,] prior to any consideration of the modification by the Commission.

[3 Alt. Where the proposed modification under paragraph 2 is determined to constitute a Material Change, the Council, based on the recommendations of the Commission, shall determine whether the Contractor is required to undertake an Environmental Impact Assessment and prepare an Environmental Impact Statement of the proposed modification in accordance with Regulations [47] and [48], respectively. The

Environmental Impact Statement, and any revisions to the Environmental Management and Monitoring Plan or Closure Plan, shall be dealt with in accordance with the procedure set out in Regulation 11, prior to any consideration of the modification by the Commission.†

4. Notwithstanding paragraph 2, ~~†the Secretary-General may propose to~~ and the Contractor may agree to a change to the Plan of Work that is not a Material Change, in accordance with the applicable Standards, to correct minor omissions, errors or other such defects. ~~[After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change.]~~ The Secretary-General shall so inform the Commission and the Council at its next meeting. The Council may decide to apply the procedure as provided in paragraph 2.

[4. bisAlt: The Commission for the Secretary-General] may propose a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. The Secretary General will transmit the proposal to the Contractor. The Contractor will respond to the proposed change. The Commission will recommend the change to the Plan of Work, and the Contractor shall implement such change. The Secretary-General shall so inform the Council at its next meeting.]

[5. All modifications to a plan of work under this regulation shall be recorded in the Seabed Mining Register.]

#### Comments

- There has been considerable support expressed for the alternative iteration of paragraph 3. However, it has been pointed out that the references to draft regulations 48 and 49 are not required on the basis that the modification of a Plan of Work does not entail an entirely new process, merely an ‘update’ of the initial Plan of Work. Delegations are invited to identify which iteration of paragraph 3 is preferred.
- Several delegations requested the reconsideration of the previous paragraph 2 Alt., which is therefore inserted. At the same time, proposals have also been made with respect to paragraph 2, suggesting that the reference to the Commission’s involvement there is satisfactory.
- Several delegations expressed support for the procedure in paragraph 4 to apply in circumstances where the underlying change does not qualify as a Material Change. Paragraph 4 is therefore presented in a clean format.
- It has been suggested that both paragraph 4 and the previous paragraph 4 Alt. should be retained, as they address different scenarios. The previous paragraph 4 Alt. is therefore proposed to be retained as paragraph 4 bis, and it now governs a scenario where a “proposal” emanates from the Commission, while paragraph 4 continues to address the situation where the Contractor or the Secretary-General propose minor changes not qualifying as a Material Change.
- A new paragraph 5 has been proposed and supported by a number of delegations.
- It has been proposed that draft regulation 57 should be swapped with draft regulation 58, as a matter of logical sequence, but there has been limited support for this proposal, and such a swap has currently not been done.

We have strong **preference for paragraph (2 alt)**. Modification of a Plan of Work is an amendment to the terms of the Contract that has been reviewed by the LTC and approved by the Council, taking into account the results of consultation. It would not be appropriate for the SG alone, operating only within non-binding Guidelines to determine whether such a change is permitted.

We would also find it helpful alongside this text to see a **draft of the Standard**, to enable clarity or discussion about what type of modification would require the full application and approval process, and what would not. Whilst the defined term ‘*Material Change*’ in the Schedule is useful, we would welcome the extra detail that the Standard can provide.

We would also find it beneficial for the Council to consider how to ensure that proposed modification to the Plan of Work that would incorporate **improved performance (e.g. lesser environmental impacts) is not disincentivised** by onerous application procedures, as has been raised inter alia by Norway and Australia. This may be another appropriate subject for the Standard.

We think there is a **gap in DR57** currently. DR57 covers a material change (requires Council approval), and correction of a minor error (can be agreed by the SG). But does not cover **a substantive change to the Plan of Work that is not deemed material**. Without this “middle” category, DR57 does not serve its proper function of triaging and channelling requests to a proportionate process. There should be a third track for substantive changes that do not meet the criteria for a Material Change. We suggest this is added: where the LTC identifies such a non-material change during the paragraph (2) process, the LTC can then agree that modification directly with the Contractor (which is then reported to the Council).

Paragraph (2) could then more clearly set out that the LTC will always make the review, but can make one of three determinations (i) the change is minor and a correction, in which case it is channelled to the SG, (ii) the change is non-material and substantive, in which case it is channelled to the LTC, or (iii) the change is material and substantive, in which case it is channelled to the Council.

We **prefer paragraph (3 alt)**. Paragraph (3) only focuses on the EMMP and the Closure Plan, whereas a change to other plans (e.g. a Mining Workplan) can also trigger a need for a new EIA (and subsequently a change to the EMMP). We are also confused how an EMMP based on a specific EIA and EIS could be amended without a new EIA and EIS? The alternative wording for paragraph (3) addresses both these issues.

We are unclear from the current drafting whether **paragraph (4)** would allow the SG and the Contractor to decide amongst themselves to make a minor change without recourse to the LTC. We would not support that, as too opaque and open to abuse or error. We would like to see **all applications for a modification to the Plan of Work to go to the LTC** for review, and channelling (as above).

We are unsure whether **paragraph (4 bis)**’s restriction only to minor changes covers the policy intent behind this provision? Whilst UNCLOS is clear that the ISA cannot unilaterally modify the Plan of Work, it seems unduly restrictive that the ISA could not make substantive proposals for modification to the Contractor, e.g. to bring them into line with new knowledge and developments in industry and environmental practice, or to meet changes made to ISA regulations or Standards. This does not align with other parts of the Regulations in which changes to the Plan of Work may be proposed by the ISA (e.g. DR58(1)(h)). We think this paragraph should not be restricted to minor changes only. Though thought should be given as to when and how the Council is involved in the LTC’s proposals. (If possible, a situation should be avoided whereby the LTC recommends a change, the Contractor agrees and applies for approval for that change, but then the Council rejects it).

We agree with the insertion of new **paragraph (5)**.