

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 58**

### **Review of a Plan of Work**

~~1. A Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the Exploitation Contract [or by decision of the Council based on the recommendations of the Commission] in accordance with the applicable Standards and taking into consideration Guidelines, including where any of the following events or changes of circumstance have occurred:~~

~~[1. Alt. Activities under a Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the Exploitation Contract, or more frequently at the request of the Commission or the Council, including where any of the following events or changes of circumstance have occurred:]~~

[1. A Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the Exploitation Contract, or more frequently by decision of the Council based on the recommendations of the Commission, in accordance with the applicable Standards and taking into consideration the Guidelines, including where any of the following events or changes of circumstance have occurred:]

~~[(a) A proposed Material Change in the implementation of the Plan of Work;]~~

~~[(a) bis Identification of a new significant environmental risk, or a significant change to existing risk calculations;]~~

[(a) bis Alt. Information has come to light that was not available when the Plan of Work was approved, including changes in Best Available Techniques, ~~or~~ Best Available Scientific Information or Best Environmental Practices, and shows that more appropriate conditions are necessary to deal with the Environmental Effects of the activity;]

(a) ter An indication that the cumulative effects of Exploitation activities exceed any environmental thresholds established under the applicable Standards ~~[and objectives established under the applicable Regional Environmental Management Plan;]~~

(a) quat. New significant information relevant to the effective Protection of the Marine Environment;

(a) quin. Adverse impacts on the environment or other activities have arisen that were not anticipated, or are of a scale or intensity that was not anticipated, when the Plan of Work was approved;

(a) sexies A request by another international body concerning other activities or measure in the Marine Environment pursuant to Regulation 31;

(b) Any Incident;

(c) Recommendations for improvement in procedures or practices following an inspection report under Regulation 100;

(d) A performance assessment which requires action under Regulation 52(8);

(e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;

(f) Significant changes in Best Available Techniques;

(g) ~~Significant changes in Best Available Scientific Information;~~

~~(g) —bis Significant changes in Best Environmental Practices;~~

~~(h)~~ Operational management changes, including changes to subcontractors and suppliers, whereby the Commission, after review with the Contractor of the Contractor's activities under the Plan of Work, shall recommend to the Council whether any modifications to the Plan of Work are necessary; [and][or]

~~(h) bis Changes in the overall policy of the Authority.~~

2. A review of activities under paragraph 1 shall be undertaken by the Contractor ~~]~~ and verified by an independent expert in accordance with the applicable regulations~~]~~. Standards and taking into consideration ~~the~~ Guidelines. The ~~[SecretaryGeneral][or][and][the Contractor]~~ shall invite the Sponsoring State or States~~, and relevant coastal States~~, to participate in the review. The results of the review shall be compiled as a report.

3. ~~The Secretary-General shall forward the report on each review to the Commission and Council, and the Sponsoring State or States. Where, as a result of a review Material Changes need to be made to the Plan of Work, the Commission shall recommend the relevant changes to the Council, and the Contractor shall implement them.~~

~~[3. Alt. The person or persons in charge of the review shall report on each review to the Commission and Council, the Sponsoring State or States and the relevant coastal States. Where, as a result of a review, the Council, Commission, Contractor or reviewer identifies that modifications need to be made to the Plan of Work Regulation 57(2) and, where applicable, Regulation 57(3) shall apply.]~~

~~[3. Alt 2. The organ in charge of the review shall report on each review to the Commission and Council, the sponsoring State or States and the relevant coastal states. Where, as a result of a review, material changes need to be made to the Plan of Work, the Commission shall recommend said changes to the Council, and the Contractor shall implement such changes as soon as viable. Where, as a result of a review, the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57 (2) and, where applicable, regulation 57 (3)]~~

3. The Secretary-General shall forward the report on each review to the Commission and Council, and the Sponsoring State or States. Where, as a result of a review a Material Change needs to be made to the Plan of Work, Regulations 57(2) and (3) shall apply.

4. For the purpose of the review, the Contractor shall provide all information required by the Secretary-General in the manner and at the times as may be necessary for the purposes of this Regulation.

5. Nothing in this Regulation shall preclude the Commission or the Council, the Sponsoring State or States, or the Contractor from making a request to initiate discussions regarding any matter connected with the Plan of Work, Exploitation Contract or the activities under the Exploitation Contract in cases other than those listed in paragraph 1.

6. The Secretary-General shall make publicly available the findings and recommendations resulting from a review of activities under this Regulation.

#### Comments

- There has been support for the alternative formulations of paragraph 1. A more recent written proposal, refining the text of the alternative version of paragraph 1, is presented now to the Council, while the erased previous iterations remain visible. Similarly, a refined and streamlined version of paragraph 3 is presented based on recent written proposals, while the previous iterations remain visible in the event the Council wishes to reconsider those iterations.
- There was considerable support for the alternative iteration of paragraph 1(a) bis, subject to some refinement of the text.
- On paragraph 1(a)ter, it has been suggested that the reference to the “objectives” of Regional Environmental Management Plans is not suitable in the light of the language in ISBA/29/C/10. Delegations are invited to consider this position. Proposals have been presented to the effect that paragraphs 1(g), 1(g) bis and 1(h) bis are not necessary in the light of the fact that paragraph 1(a) bis (in its alternative iteration) already captures them.
- Proposals have been made to paragraph 2 to the effect of the exclusion of independent expert review and a specific designation of coastal States. Delegations are invited to consider the position.

The new drafting of paragraph (1) seems sensible and clearer. Though we note that paragraph (2) needs aligning with the new formulation i.e. to change reference to the ‘review of activities’ just to ‘review’ (or to ‘review of the Plan of Work’).

We have some concerns about the **sub-paragraph list in paragraph (1)**, finding that various comments made by delegates in July 2024 requesting merging or amendment of the sub-paragraphs are yet to be reflected in the text. As currently drafted, the list of potential trigger events listed in paragraph (1) seems to:

- **Include items that should not be included.**
  - E.g. sub-paragraph (1)(a) (Material Change). Elsewhere in the regulations, a proposal for a material change triggers DR57, which sets out a comprehensive process for review and approval of the proposed modification to the Plan of Work. To include the same event, simultaneously, as a trigger point in DR58 for a review of the Plan of Work seems duplicative and confusing. Not least because the ultimate outcome of DR58 is itself likely to be the proposal of a Material Change (which would trigger DR57 again – and also DR58 again – causing a never-ending loop!)
- **Contain duplicated items.**
  - E.g. there are overlaps between sub-paragraphs (a)(bis)(alt) and (a)(quat) and (f); and between sub-paragraphs (a)(ter) and (a)(quin).
- **Unduly narrow the criteria.**
  - E.g. sub-paragraph (a bis)(alt) covers new information arising that is relevant to BEP etc. - an important potential trigger event in our view. But the provision ends with a specific limitation that the trigger only arises where such new information ‘*shows that more appropriate conditions are necessary to deal with the Environmental Effects of the activity*’. This greatly reduces the effect of the sub-paragraph. We do not understand why other types of information could not also be allowed as relevant.
  - Another example is (a)(sexies), which allows an ‘international body’ to make a request for a review, but not, for example, another ISA contractor or another marine user that is a private sector company or State and who may be directly affected by the operation of the Plan of Work in question.
- **Omit items that should be included.**
  - E.g. the sub-paragraph list does not include a situation where the Council has approved a significant change to the Regulations or Standards that govern the Plan of Work. This seems like a crucial point at which existing Plans of Work should be re-assessed to assist bring them into line with any new requirements.

For these reasons, we consider that this paragraph (1) needs further review and streamlining (with the possibility of some content moving to the relevant Standard).

In **paragraph (2)**, like others, we consider retention of the **role of the independent expert** to be crucial. Reliance upon self-assessment is not sufficient in this important review process. There would be a clear conflict of interest because a finding of an inadequate Plan of Work may lead to administrative or regulatory processes for the Contractor

that come with a cost. Indeed, this paragraph has already been watered down once. We recall earlier alternative wording in paragraph (2) that provided for the commissioning of independent experts to conduct the review, which was deleted, in favour of the current text that provides for verification by independent experts only. We expressed preference for the former approach and welcome and explanation as to why the latter was chosen and remain strongly concerned about an approach that relies on self-assessment.

We believe that paragraph (2) would also benefit from an additional clause requiring the Contractor to submit its report to the Secretary-General, to make sense of **paragraph (3)** (which requires the Secretary-General to have a copy of the report).

Previous language in **paragraph (4)** established an obligation upon the Contractor to provide information to experts engaged in this review, but this wording was deleted in the previous version of the text (without explanation). This leaves the Secretary-General as the recipient of all information (despite not being a party to the review?) Like others who raised this in the July 2024 session, we propose reinstatement for further discussion. It seems to us that requiring the Contractors to cooperate and provide information directly to experts will be the most efficient means of facilitating their review.

For **paragraph (6)**, we recall in July 2024 the United Kingdom had requested to include cross-reference to DR92 (Seabed Mining Register) to clarify that this should be the mechanism by which the report is made public. That seemed a good suggestion, and we are unsure why that specific drafting proposal is not reflected in the latest text.