

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 60

Final Closure Plan: Cessation of production

1. A Contractor shall, at least 24 months prior to the planned end of Commercial Production submit to the Secretary-General, for the consideration of the Commission, an updated Closure Plan.

[1. bis. Alt. The Contractor shall conduct consultation on the Final Closure Plan with all States and Stakeholders in accordance with Regulation 93bis.]

2. The Commission shall examine the Final Closure Plan and any comments received pursuant to paragraph 1[bis Alt] [within 90 Days of receipt of comments from the stakeholder consultation.

3. If the Commission determines that the Final Closure Plan meets the requirements of Regulation 59, it shall recommend approval of the Final Closure Plan to the Council.

4. If the Commission determines that the Final Closure Plan does not meet the requirements of Regulation 59, the Commission shall require the Contractor to make and submit amendments to the Final Closure Plan as a condition for recommendation of approval of the plan in accordance with paragraph 3 of this Regulation.

5. The Commission shall give the Contractor written notice of its decision under paragraph 4 above and provide the Contractor with the opportunity to make representations or to submit a revised Final Closure Plan for the Commission's consideration, within 90 Days of the date of notification to the Contractor.

6. The Commission shall consider any such representations made, or [any] revised Final Closure Plan submitted by the Contractor when preparing its report and recommendations to the Council.

7. The Commission and Finance Committee shall review the amount of the Environmental Performance Guarantee provided under Regulation 26 and include the results of that review and any recommendations in [the Commission's] report to the Council on the Final Closure Plan.

8. The Council shall consider and take a decision [based] on the report and recommendation of the Commission relating to the approval of the Final Closure plan and the amount of the Environmental Performance Guarantee.

9. Any reports and recommendations submitted to the Council and decisions made by the Council under this Regulation shall be published on the Authority's website within [7] Days of a submission or decision being made.

Comments

- It has been suggested by a delegation to handle temporary suspension in a separate regulation since this regulation should focus on cessation. The handling of temporary suspension in the context of closure must be discussed and resolved, so that this draft regulation can be updated in that regard. For the time being, temporary suspension has been omitted from paragraph 1 as it is already governed in draft regulation 59. The term “Temporary Suspension” has been added to the Schedule to ensure that the understanding hereof, and the triggering hereof, is being set out.
- Reference to technical expertise in para 2 has been omitted since that is already evident from the Commission’s mandate. Also reference that is already contained in the extensive provisions of draft regulation 59 has been omitted here if there were any overlaps.
- Considering the extent of proposals and changes to the regulation, the regulation has been presented in a clean version.

We agree that this regulation about the Final Closure Plan does not include suspension in its scope. In relation to the President’s proposal to include the term ‘**Temporary Suspension**’ as a defined term in the Schedule, we suggest this should be worded just as ‘*Suspension*’ to align with the other regulations that deal with suspension. (As far as we are aware, there is no type of suspension covered in the regulations that is not temporary, so the extra word seems superfluous anyway.)

It would be helpful to add some clarification into **paragraph (1)** as to what type of update is expected, e.g. “*a Contractor shall take into account any new (a) knowledge held by the Contractor; (b) developments in Best Environmental Practices and Good Industry practice, and (c) revisions to the Authority’s Regulations and Standards - that were not previously taken into account in the Closure Plan development and any subsequent reviews*”.

As previously raised (e.g. by Germany, Russia, United Kingdom, and Morocco on behalf of the African Group in the July 2024 Council session), throughout the regulation, the **term ‘Final Closure Plan’ is used incorrectly**. The Schedule to the Regulations defines ‘*Final Closure Plan*’ as ‘*a version of a Contractor’s Closure Plan that has been approved by the Council pursuant to Regulation 60*’. The term therefore cannot be used for an updated Closure Plan that is being reviewed prior to the Council’s approval. Paragraphs (2)-(8) should be amended to refer to an ‘*updated Closure Plan*’. The regulation could further clarify that (i) the purpose of the DR60 process is to arrive at a Final Closure Plan, and (ii) (only) once the Council decides on approval under paragraph (8), the Contractor has a Final Closure Plan.

Paragraph (2) needs an additional clause at the end ‘*...and shall make a report and recommendation to the Council on whether to approve the Final Closure Plan.*’, otherwise the regulation only permits the LTC to make a report and recommendation to the Council if the recommendation is one of approval. We believe the intention is to give the Council the decision whether or not to approve.

Paragraphs (4) and (5) have the LTC ‘requiring’ and ‘deciding’ in a way that binds the Contractor. We are concerned this appears to give the LTC rule-making or decision-making powers beyond the legal competence given to that organ by UNCLOS - though we agree with the procedures set out (4) and (5). We suggest the issue can be addressed by changing the terminology here to ‘propose’ and ‘proposal’ (to replace ‘require’ and ‘decision’)

As was raised by Fiji and Costa Rica in July 2024, this regulation does not provide for **what happens if a Contractor does not amend the Closure Plan as requested under paragraph (6), or the Council does not approve a Final Closure Plan under paragraph (8)**. We presume there would be opportunities for the Contractor to reconsider and resubmit, but otherwise it would become a compliance situation, and the ISA would be required to force termination of the Contract under DR103, and to fund Closure operations using the EPG. It may be helpful to include this in the regulations?