

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 93 bis**

**[State and] Stakeholder Consultation**

1. Consultation with States and Stakeholders shall be inclusive and transparent [and], be conducted in a timely manner [and in accordance with Regulation 93 ter].

~~[1 bis Where these Regulations require consultation with States and Stakeholders by an applicant, or a Contractor, consultation shall be conducted in accordance with this Regulation, applicable Standards, and taking into consideration Guidelines.]~~

2. The applicant or Contractor shall provide the Secretary General with a list of ~~[potentially directly affected]~~ Stakeholders [and States within the scope of Regulation 93 ter].

3. At least 2 weeks before the consultation begins, the Secretary General shall correspond directly with all States and ~~[potentially directly affected]~~ Stakeholders advising that ~~that~~ the consultation will occur and shall publish such advice on~~at~~ the Authority's website.

4. The Secretary General shall determine the consultation period for each consultation, which shall begin on the date of the publication of a notice of consultation and may not be less than [90] Days.:

a) ~~[45]/[60] Days for a consultation relating to a scoping report prepared pursuant to Regulation 47 bis; and~~

b) ~~[60]/[90] Days for all other consultations.~~

5. The Secretary General shall prepare a notice of consultation. The notice of consultation shall invite States and Stakeholders to make submissions to the consultation, describe the matters on which submissions are sought, include the documentation that is the subject of consultation and other relevant information, and specify the final date for submissions. The applicant or Contractor shall provide the Secretary General with all information and documentation required to prepare a notice of consultation.

6. The Secretary General shall publish the notice of consultation on~~at~~ the Authority's website and send written notice of consultation to States and ~~[potentially directly affected]~~ Stakeholders.

7. During the consultation period, the applicant or Contractor shall ~~[endeavour to]~~ conduct engagement with States and ~~[potentially directly affected]~~ Stakeholders [public engagement], and in accordance with [Regulation 93 ter] applicable Standards, and taking into ~~[consideration]~~ Guidelines. The Secretary General may, [in consultation with the relevant applicant or Contractor], direct the applicant or Contractor to conduct such

meetings, workshops and engagement [or facilitate such meetings, workshops and other forms of engagement].

[7. bis. The applicant or Contractor shall organize at least one public meeting during the consultation period to allow stakeholders to ask questions and express their concerns directly.]

8. The Secretary General shall receive all submissions [and transmit all submissions to the applicant or Contractor.]

9. [The Secretary General shall transmit all submissions to the applicant or Contractor.]  
The applicant or Contractor shall consider the submissions received and [may] [shall] revise the documentation that was the subject of consultation. The applicant or Contractor shall prepare a written response to consultation that collates and responds to the [substantive] comments expressed in submissions and includes an explanation of any revisions to the document and how those revisions respond to [substantive] comments expressed in the submissions. ~~The applicant or Contractor shall submit the written response, with any revised documentation, to the Secretary General for transmission to the Commission.~~

10. The Secretary-General shall maintain a permanent public record of the notice of each consultation conducted under this Regulation, all submissions, and the written response to consultation, by publishing the notice, submissions and response on~~at~~ the Authority's website (except for Confidential Information which shall be redacted from documents before publication). The Secretary-General shall ensure that such consultation records relating to a specific Exploitation Ceontract are included in, or are accessible from, the relevant entry in the Seabed Mining Register, in accordance with Regulation 92.

10. bis. The results of each consultation shall be summarized in a public report, including an analysis of the key points raised by stakeholders and how these key points were addressed.

The provisions on Stakeholder consultation have been the subject of intensive discussion and intersessional work. We are grateful to the delegations and observers who have continued work to refine these provisions. However, we believe there are further improvements that could be made. First, we believe it is important to emphasize that DR93bis does not cover all Stakeholder consultations; in particular, it seemingly **covers only those required of a Contractor or applicant**. We would therefore like to retain 1bis in order to clarify the scope of DR 93bis as currently drafted and envisioned. We think the title of DR93bis should also read “*State and Stakeholder Consultation by an Applicant or Contractor*”. This is to avoid confusion that this DR93bis also covers consultations by the ISA itself. Which it does not cover.

The ISA itself must also consult on applications, material changes to a Plan of Work, and other decisions. That consultation informs the ISA's regulatory decisions, and allows the ISA to hear public and expert opinions on how the ISA should apply their decision-making powers. These are separate processes and separate duties to consult. We would like, again, to raise our concern that the **ISA does not have any rules or procedures in place for its own consultation**. Outlining the objective and principles of public participation that binds all actors, steps for how this can be achieved, how stakeholders can or should be identified, timeframes, methods of information-sharing and dialogue facilitation, what the contractor or ISA's responsibility is to respond to inputs received from the consultation, publication of stakeholder comments and responses to those, etc is key to streamlining all aspects and actors conducting stakeholder consultations, and needs to be prioritized.

Further, we would again like to state that the **role of the Secretary-General is deeply problematic** as currently drafted, and we do not support it.

(1) There are separate actors and duties for the conduct of EIA. The ISA's duty is to meet Part XI (and Article 145). The sponsoring State's duty is to meet Part XII and customary law EIA requirements (and potentially other treaties to which it is party). The contractor's duty comes from the Regulations and contract (and also the 1994 Agreement). It is helpful for the ISA's rules, regulations and procedures to reflect these differing responsibilities accurately. If the SG

takes on administrative duties for a contractor or State's EIA, then he/she is taking on responsibility for other actors' obligations. This may give rise to confusion about roles and responsibilities, enforceability and accountability.

(2) We understand that the role suggested for the SG is not just about sharing information with ISA States Parties and observers, but about wider outreach (on behalf of an individual State or contractor) to any stakeholder who may be interested in their proposed activity. In our opinion this goes beyond the Secretariat's mandate to administer to the ISA and its organs (not to individual States or contractors) and is hard to align with UNCLOS Article 168: "In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from other source external to the Authority." It is also a time and resources drain on the ISA, which should be more properly placed on the contractor. Finally, it sets an unwelcome precedent for contractors to delegate the performance of their own legal duties to the very body that is supposed to provide arms-length supervision, and to regulate their compliance with those duties.

(3) It is also a practical manner. Is the SG the best means, for example, to reach a sponsoring State's target audience? (Does the proposal risk infringing individual States' domestic EIA laws?) One reason for the different actors having distinct legal obligations to conduct EIAs, is that they may each have different constituencies to consult, and different legal frameworks to follow. As an example, some national EIA laws require specific meetings with traditional leaders or certain communities. The proposed procedure in the non-paper would not appear suitable for that requirement, but for the contractor or State to hold such meetings without SG involvement could then put them in breach of the Exploitation Regulations if this proposal is implemented.