

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 94

Adoption of Standards

1. The Commission shall, taking into account ~~[the views of [recognized experts identified in accordance with Annex X], Stakeholders and relevant]~~ existing internationally accepted standards, ~~[where applicable,]~~ make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to, inter alia:

(a) Operational safety;

(a). bis The effective protection of human health and safety, and labour matters;

(b) The conservation and Exploitation of the Resources; and

(c) The Protection of the Marine Environment, including standards or requirements relating to the Environmental Effects [and impacts] of Exploitation activities, as referred to in Article Regulation 145 of the Convention.

1. bis Standards shall describe [and determine] how the Authority and Contractors shall implement these Regulations, and shall aim for:

(a) A uniform and non-discriminatory operating environment for all Contractors;

(b) A consistent approach by all parties to reduce Environmental Impacts and human health and safety risks to as low as reasonably practicable; and

(c) An outcomes-based approach to regulation [where feasible], which prescribes rigorous environmental outcomes while affording flexibility for the processes by which these outcomes are achieved to enable continuous improvement, particularly as technology advances.

2. The Council shall consider [and provisionally adopt approve], upon the recommendation of the Commission and taking into account [statements][comments] submitted by Stakeholders during a public consultation, the Standards, [provided that] [including whether] such Standards are consistent with the intent and purpose of the rules, regulations and procedures of the Authority, including the decisions of the Council and the Assembly and, to the extent relevant, developed on the basis of Best Available Scientific Evidence, Best Environmental Practices, Best Available Techniques, and Good Industry Practice. If the Council does not [approve] [adopt] such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council. The Standards [approved] [adopted] by the Council shall remain effective on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the Assembly.

3. The Standards contemplated in paragraph 1 above ~~must~~ [shall] include both qualitative and quantitative standards, if applicable, and must include all the methods, processes and technology required to implement the Standards.

4. Standards or amendments thereto adopted by the Council ~~[and approved by the Assembly]~~ shall be legally binding on Contractors, member States and the Authority from the date of their adoption and the Commission shall review these Standards at least every [five] years from the date of their adoption or revision and advise the Council, in the light of improved knowledge or technology [and new contributions from Indigenous Peoples and local communities], as to whether any revision is required].

4. bis Standards adopted or revised may incorporate an appropriate transition period for implementation by existing Contractors.

[4.ter. For the avoidance of doubt, compliance with Standards is a fundamental term of the Exploitation Contract, for the purposes of regulation 103.]

5. In the event of any conflict between the provisions of these Regulations and the provisions of a Standard, the Regulations shall prevail. The Authority [Council] should be notified of the conflict, ~~[and shall provide additional guidance as necessary.]~~

Comment

It has been suggested by one delegation to place the content of draft regulation 45 concerning environmental standards into paragraph 1(c) in order to avoid overlaps and consolidate the regulations.

In relation to paragraph (1), we recall Ghana, on behalf of the African Group, proposing the replacement of the term ‘recognized experts’ with ‘competent independent experts’ as is referred to elsewhere in the regulations. We support this and would not like to see **the role of independent experts** struck off in line 1. We understand that the reference to Annex X was not correct, and so would suggest another new Annex to the regulations be developed concerning the use, need and selection process for these experts at different points in decision making. That Annex can set out transparent procedures and objective criteria for identifying and recruiting external experts where required to support the ISA’s work. This is a cross-cutting issue throughout the regulations. This new Annex could then apply to each regulation that requires the ISA to involve competent independent experts (which is otherwise inserted in various parts of the regulations without any further explanation e.g. DR11 and 12). The term ‘competent independent experts’ could be defined in the Schedule, as a person identified in accordance with the Annex, and then the Annex would not need to be expressly referenced in the Regulations every time. If the Council does not feel an Annex is the appropriate place for such procedures and objectives we would recommend the same content be elaborated into a policy document and appropriately referenced in the regulations.

In **sub-paragraph (1)(a)** we are unsure what ‘operational safety’ covers, that would not already be covered by sub-paragraphs (a bis)-(c) (relating to: health and safety, Exploitation, and protection of the marine environment).

We strongly support the retention of **paragraph (4)(ter)** since without that paragraph it is not clear how Standards are made legally binding. The regulations do not specify that Standards are among the ‘rules, regulations, and procedures of the Authority’, the breach of which enables compliance action under DR103. So DR94(4)(ter) is required to close the loophole, as breach of a fundamental term of the contract is another trigger event for ISA compliance action.