

## 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 96 ~~quater~~ Request for inspection in the event of harmful effects ~~Harm~~ to the Marine Environment**

[1. In the event of harmful effects ~~Harm~~ [or risk of harmful effects] to the Marine Environment ~~[or the livelihood of any coastal community, the~~ [adjacent]/[potentially affected] [coastal State or States] [any coastal community] which have grounds for believing such harmful effects ~~are~~ caused by activities in the Area, shall notify the [Chief Inspector [and the relevant Contractor] through the] Secretary-General in writing of the grounds upon which such belief is based and request an inspection. [The notification shall include all relevant evidence, all documentation supporting the belief that the harmful effects are caused by activities in the Area.]

2. The [Chief Inspector], ~~[upon such notification by a Member State,]~~ shall examine immediately the grounds for an inspection request and shall promptly initiate inspection where such grounds appear reasonable, and invite representatives of the [adjacent]/[potentially affected] coastal State or States to [participate in the inspection] [accompany the Inspector], no later than 24 hours after such notification was made by the State or States ~~[to facilitate assessment by the Council of whether any [pollution or] the harm is attributable to activities in the Area.].]~~

**Comment**

It has been suggested to use “*harmful effects*”, “*serious harm*” or “*incidents*” instead of “*Harm*”, as this is not a defined term in the Regulations. “*harmful effects*” have been used as this is in accordance with Article 145 of the Convention.

We find this DR96 ~~quater~~ duplicative and undermining of DR4(4)-(5 alt); and in scope we find it simultaneously **too vague** (What constitutes ‘harmful effects’?) and **too restrictive** (Why only coastal States? Why only environmental harm?) We suggest its wholesale deletion. An optional two-part replacement would be:

- (1) A **general provision that requires the Chief Inspector to examine any complaints**, allegations or other sources of relevant information that suggest any harm to the Marine Environment outside of the terms of the Contract, or any other form of unpermitted harm, howsoever or from whomever that information is received to assess whether it gives rise to a need to adjust the inspection programme.

This is general best regulatory practice, whereby any report of non-compliance or other related intelligence received by a regulator should be triaged, assessed and preliminarily investigated, with a decision taken (and recorded) at an appropriate level, as to whether further action is required and if so, what. The regulatory response may, for example, be an inspection, it may be other enquiries, it may be no action, it may be a reference to the Compliance Committee. The Regulations should not pre-judge an outcome. The results of the decision would then be communicated back to the complainant where appropriate. We describe such an inclusion as ‘optional’, as it may be more suitable content for the Compliance Strategy and operational procedures of the ISA, rather than the Regulations.

- (2) A provision that provides for the Chief Inspector to notify and **invite representatives of a State to participate in an inspection, in any case where their jurisdiction or interests may be directly affected** by the issue at hand.

This could replace current DR96bis paragraph (2), and that would give the ISA a little more direction and control over who may accompany an inspector on any given site visit.