September 2025

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.

Preamble

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Convention") and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Agreement"), the Area and its resources are the common heritage of humankind, and the Exploitation of the resources of the Area shall be carried out for the benefit of humankind as a whole, on whose behalf the Authority acts.
The objective of these Regulations is therefore to regulate the Exploitation of the [mineral] resources of the Area consistent with the Convention, including the duty [to take necessary measures in accordance with the Convention] to ensure effective Protection [of] ~~for~~ the Marine Environment from [harmful effects] [Serious Harm] caused by those activities.

[The Authority acknowledges the current uncertainties and limited knowledge about deep ocean ecosystems and the potential effects of activities in the Area and the need to revise these regulations in light of advancements in scientific knowledge.]

Comments

- It has been suggested by some delegations to insert reference to "*mineral*" in the second sentence, as this is the resource referred to.

Resources is a defined term in the Schedule to the Regulations (" ***'Resources'*** *means all solid, liquid or gaseous Mineral resources, Mineral-bearing ore, associated Minerals, or mixture thereof in situ in the Area at or beneath the seabed.*") We therefore suggest for clarity and consistency to capitalise the word 'Resources' in the Regulations wherever the defined term is intended (and not to add 'mineral' beforehand).

'The Convention' and 'The Agreement' are defined terms in the Regulations' Schedule, and as such need not be spelt out in full in the preamble. If the full titles are preferred here, then the terminology used for the Convention should be aligned with the definition included in the Schedule, as there are small differences currently.

- It has been suggested to replace the convention text, "*harmful effects*" with "*serious harm*". This must be considered as a cross cutting issue.

We strongly disagree that it is a cross-cutting issue whether to replace **'harmful effects'** of the Marine Environment' with **'serious harm'**. These are two different legal terms, with different meaning and implications, used differently in UNCLOS – and their use in the Regulations must reflect this – with each term being used as is appropriate in the context. Here, the context requires use of 'harmful effects', for the following reasons.

The ISA is required to take measures to "*ensure effective protection for the marine environment from harmful effects which may arise from [activities in the Area]*" [Article 145, UNCLOS]. This is a collective implementation of the general obligations of all States "*to protect and preserve the marine environment*" [Article 192, UNCLOS], and to establish rules, regulations and procedure at the international level to "*reduce and control pollution of the marine environment from activities in the Area.*" These are affirmative obligations mandated by UNCLOS; UNCLOS does not narrow or caveat these obligations by reference to 'serious harm'.

Serious harm is a separate term, with a separate meaning and implications under UNCLOS. Within Part XI, it can be inferred that there is a threshold of 'serious harm' that is absolutely prohibited [Articles 162(2)(w) and (x); 165(2)(k) and (l)]. This threshold is used in UNCLOS Part XI to refer specifically to (i) emergency orders to suspend activities in the Area, and (ii) designation of no-go zones in which no activities in the Area will be permitted. 'Serious harm' is an extreme threshold, applicable in narrow regulatory circumstances, and should not be the benchmark the ISA uses ISA for its general environmental management obligations and aspirations. Articles 145, 192 and 209 of UNCLOS expressly provide for such general obligations, and this should be reflected in the preamble and throughout the regulations. We urge the Council to uphold these duties properly, by aspiring to best environmental outcomes and practices, and not by defaulting to an aim to prevent only the highest degree of unpermitted harm. We suggest that a general policy to establish the ISA's environmental objectives at a strategic level is much needed and would clarify and enable mutual agreement on these fundamental issues, facilitating better cohesion and adherence to UNCLOS in the Regulations.

We note that this second sentence of the preamble uses a defined term introduced in the February 2024 Consolidated draft of the Regulations (and not discussed by Council): ***'Protection'***. The definition contained in the Schedule relates only to environmental protection. We suggest that the defined term should be changed from 'Protection' to 'Protection of the Marine Environment'. This is to avoid illogical applications occurring in the Regulations where the word 'protection' is used in other contexts e.g. where the Regulations address 'Protection of human life and safety', 'Protection of cultural rights', or 'protection' for a contractor against contract termination.

- It has been suggested by one delegation to add paragraph 3 to underline that the draft Regulations are dynamic and subject to amendments in the light of evolving scientific knowledge. It should be discussed whether this addition is necessary or redundant as it might already be clear from the Convention.

We support the inclusion of this **paragraph (3)**. It assists clarify States' obligation to apply the precautionary principle/approach and to legislate on the basis of best available science-based evidence and signals the Council's intention to take appropriate control over its own rule-making.

We also note a textual addition that was proposed in a written submission by a Council member State since the February 2024 draft text, which we believe has not yet been discussed by Council: "*Recalling the United Nations Declaration on the **Rights of Indigenous Peoples** and existing international rights of Indigenous Peoples or of, as appropriate, local communities*". We are unsure why it has not been included as a proposal in this text? We also recall that the intersessional Working Group on Underwater Cultural Heritage has similarly submitted text, including text broadly agreed to by the IWG, and two alternate final paragraphs, which are not reflected here.