

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL - PART II**

Informal Working Group - Inspection, Compliance and Enforcement

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@isa.org.jm.

1. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

2. Please indicate the relevant provision to which the textual proposal refers.

DR 100

3. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

- The facilitator’s proposed amendments are reflected in **red**.
- Our proposed amendments are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

1. ~~[Immediately after]~~ At the end of an inspection, the Inspector shall prepare a report, [in accordance with the template to be prescribed in the and Standards], setting out ~~the, inter alia, his or her general~~ findings and any recommendations for improvements in [performance], procedures or practices by ~~the a~~ Contractor. The Inspector shall send the report to the Secretary-General and the Secretary-General shall send a copy of the report to the Contractor and to the sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State and shall publish a copy of the report in the Seabed Mining Register.

2. The Secretary-General shall report annually to the Council on the findings and recommendations following the inspections conducted in the prior Calendar Year, [as compiled in a report by the Inspectors]. ~~The~~ [Director-General] ~~and~~ shall make any recommendations to the Council on any regulatory action to be taken by the Council under these regulations and an exploitation contract. [taking account of any regulatory action taken by the sponsoring State or States or corrective actions taken by a Contractor to address the findings or recommendations.]

3. The ~~[Secretary-General]~~ shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector by any person or the failure by a Contractor to comply with regulation 96 ~~. The~~ [Secretary- General] shall:

(a) Report such acts immediately to the sponsoring State or States ~~and~~ the flag State of any vessel or Installation concerned [and the national State of the Inspector] for consideration of the institution of proceedings under national law.; and

(b) Report such acts to the [Secretary-General Council] and consider the exercise of powers under regulation 103.

4. The Inspector shall also report acts referred to in para. 3 immediately to the [Secretary-General] and shall take the appropriate measures under Regulation 103.

Regulation 100bis: Contractor compliance report

The Secretary-General shall prepare an annual compliance report for each Contractor, which shall be made available in draft form for comment to the Contractor and the Sponsoring State, before being reported to the Council and published on the Seabed Mining Register. The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.

4. Please indicate the rationale for the proposal. [150 word limit]

Regarding **paragraph 1**, inspectors should provide regular reports. We consider the proposed changes in paragraph 1 to be helpful to clarify that there should be a defined procedure or template for standardized reporting (and standardization of data) to promote transparency and clarity. Non-confidential content of the report should also be made available to all ISA organs and the public, and so we recommend additional working at the end of paragraph (1) to require this content to be published in the Seabed Mining Register.

Regarding **paragraph 2**, we recommend bracketing references to responsible entities when non-administrative duties are being considered as the role of the Secretary-General in the ISA's inspection mechanism is still up for debate

Regarding **paragraph 2 bis**, we would like additional clarification on the intent of this proposal. This text prescribes that ISA inspector reports shall be admissible as evidence in court proceedings. To our knowledge, the ISA does not have jurisdiction over what evidence is admissible in any national or international court. As mentioned earlier, in relation to draft Regulations 97, where the ISA is conducting inspections, but the sponsoring State would be responsible for bringing enforcement proceedings, it would be prudent for the ISA to cooperate with Sponsoring States to make sure evidence is collected and recorded in such a way that it is credible and usable in national civil or criminal enforcement proceedings. But we do not think the ISA can legislate to guarantee its admissibility.

Finally, we consider that the ISA should maintain and publish compliance records for all Contractors. This is important to uphold standards of transparency and accountability. It can also be a low-cost means of incentivising compliance, as operators are often highly concerned to maintain a positive public image. We would therefore propose a new provision, which could be a **draft Regulation 100bis**, which would require the compilation of an annual compliance report for each Contractor, which (after due opportunity for Contractor and Sponsoring State review and comment) shall be reported to Council, and published.