

**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 98

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**.

~~1bis Inspectors shall:~~

~~— (a) follow all reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor or the captain; and
(b) to the maximum extent possible, refrain from any undue interference with the safe and normal operations of the Contractor and of vessels and Installations, unless the Inspectors have reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.~~

~~(1)(e)-Inspect or test any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector’s opinion, is being or is intended to be used for the purposes of the Exploitation activities, unless such inspection or testing will unreasonably interfere with the Contractor’s operations in the Area;~~

We would like to retain the following provisions:

~~[(f) Seize any document, article, substance or any part or sample of such for examination or analysis that the Inspector may reasonably require;]~~

~~[(g) Remove any representative samples or copies of assays of such samples from any vessel or equipment used for or in connection with the Exploitation activities;]~~

~~[(h) Require the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities as may be deemed necessary by the Inspector, unless such procedures will unreasonably interfere with the Contractor’s operations and]~~

~~[3. Before an Inspector may seize any document under paragraph 1 (f) above, the Contractor may copy it.]~~

~~[4. When an Inspector seizes or removes any item under this regulation, the Inspector shall issue a receipt for that item to the Contractor.]~~

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

Regarding 1bis, the heading and subject of draft Regulation 98 is 'Inspectors' powers' but the proposed 1bis instead refers to general obligations of Inspectors, and not their powers. We believe these points are already covered elsewhere in this Part of the regulations, and as such, we recommend deleting proposed draft Regulation 98(1 bis) to avoid duplication.

For paragraph 1, we wonder whether consideration may be given to enabling the Council to task Inspectors with other responsibilities, designed to support the Council deliver on its duties under UNCLOS more widely?

For example, during the 2019 workshop about ISA Inspections and Inspectorate, the following suggestions were received from many ISA delegates about additional functions for which the ISA may wish to deploy inspectors:

- active promotion of understanding of ISA's rules,
- facilitating peer-to-peer learning between Contractors.
- making recommendations for the improvement of ISA's rules and procedures,
- providing advice to the ISA on the evolving interpretation of Best Environmental Practice and Good Industry Practice,
- providing monitoring information about the overall state of the environment on a regional-scale (ie taking into account cumulative impacts).

It may be sensible to retain the possibility for Inspectors to undertake such wider activities. We note this could also be covered by DR98(1)(i).

We believe **sub-paragraphs (1f-1h) and paragraphs (3) and (4)** (below) should be retained. For the ISA to meet its duty to exercise control over contractors and their activities in the Area, it needs appropriate compliance powers, which include powers of inspection and evidence-gathering. The intelligence gathered by Inspectors may either inform ISA actions, or sponsoring State actions - and we are conscious that sponsoring States may have more options available to them to pursue civil or criminal offences via national courts than the ISA, who can rely only on the sanctions in UNCLOS and these regulations. It seems possible to us that original documents or samples may be required for evidential purposes in national proceedings. Also that independent verification of ore samples may be required - e.g. to check the metal content that is claimed for royalty purposes. It's possible other samples - biological or water samples for example - may also need to be independently tested e.g. to verify toxicology claims. Of course, the powers granted to ISA Inspectors need to be reasonable. We would propose that, where the ISA has monitoring and enforcement powers that may be considered somewhat intrusive, the key is to ensure there are appropriate procedural safeguards in place around the circumstances in which such powers can or should be used, and the procedures that will be followed when such powers are used - reasonableness, proportionality, and evidence-based decision-making should be guiding principles, and the contractor should have a clear and accessible right to appeal against actions or decisions it considers unreasonable or unlawful.