

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

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

1. Name of Working Group:

Inspection, Compliance and Enforcement

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

The Pew Charitable Trusts

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

Draft Regulation 100

4. 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 facilitators’ proposed amendments are reflected in **red**.

Our proposed amendments and our questions or comments regarding the facilitator’s remarks are indicated as in-line edits in **blue**. Where we propose deletions of the facilitator’s text this is shown **in strikethrough and bold**.

Regulation 100 - Inspection Reports

1. ~~Immediately after~~ [At] the end of an inspection, the Inspector shall ~~prepare~~ [deliver] a report ~~promptly to the Inspectorate~~, [in accordance with the template ~~to be prescribed in the~~ and other requirements set out by the applicable Sstandards], setting out the findings and any recommendations for improvements in [performance], procedures or practices by a Contractor. The ~~Inspector~~ [Inspectorate] shall send the report to the ~~Secretary-General, the Commission, and the Council~~ Contractor and its sponsoring State or States, as well as the Compliance Committee ~~as soon as it is completed~~. The Compliance Committee shall ask the Secretary-General ~~to shall~~ send ~~immediately~~ a copy of the report to ~~the Contractor and to the sponsoring State or States and, if appropriate, the any relevant coastal State or States and the flag State~~ and to publish a copy of the report in the Seabed Mining Register.

2. The ~~Secretary-General~~ [Inspectorate] 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] ~~and any compliance actions taken by the Compliance Committee~~, 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.] ~~The Council shall invite the attention of the Assembly~~

to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.

[2.bis Inspection reports drawn up by Inspectors shall constitute admissible evidence in administrative or judicial proceedings.]

3. The ~~[Secretary General]~~ [Inspectorate] shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector [in the course of their duty] by any person or the failure by a Contractor to comply with regulation 96 [to the ~~Secretary General~~][Compliance Committee].

3. bis. The ~~Secretary General~~ [Compliance Committee] shall: R report such acts immediately to the sponsoring State or States and the flag State of any vessel or Installation concerned, the national State of the Inspector [and the national State of the representatives of sponsoring States, any other State Party, or other party concerned who accompany the inspector] for consideration of the institution of proceedings under national law; and

4. Where a report is made by the Inspectorate under sub-paragraph (3), The [Inspectorate] and the Compliance Committee ~~[Inspector]~~ shall ~~[also report acts referred to in para. 3 immediately to the [Secretary General] and shall]~~ take the appropriate measures under Regulations 99 and 103 respectively.

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

Regarding paragraph 1, the involvement of five different organs and limbs of the ISA in this process seems convoluted. It could be streamlined by the Inspectorate delivering its report to the contractor, sponsoring State and the Compliance Committee, with the Compliance Committee managing its onward dissemination to States, and reporting to the Council. Non-confidential content of the report should also be published in the Seabed Mining Register. Also, the reference to the template and Standard is helpful to clarify that there should be standardized reporting, though we suggest that the wording here ('to be prescribed in Standards') should be edited, for consistency with other parts of the Regulations.

Regarding paragraph 2, Annual reporting to the Council on contractor inspections may be a function that could be allocated to the Compliance Committee. We consider it possible that there are compliance and enforcement actions that would be taken, outside of an inspection, which should also be included in the report. For example, a Compliance Notice could be issued on the basis of self-reporting from a Contractor or third-party intelligence, especially if an urgent issue is identified and action is reasonably required from the ISA in a timeframe that does not permit for an inspection first. We also note that Article 162(2)(a) of UNCLOS requires Council to 'invite the attention of the Assembly to cases of non-compliance'. If that provision of the Convention is intended to include non-compliance by contractors, we suggest that this additional report by Council to Assembly be included at the end of paragraph (2).

Regarding paragraph 2bis, as noted by other member States during the November session, the ISA does not have jurisdiction over what evidence is admissible in any court. As mentioned in our submissions on DR 97(5), 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 collected is usable in national civil or criminal enforcement proceedings, which would need to take account of national rules about court procedure and evidence.

Regarding paragraph 4, we support the idea that the Regulations should reserve to the ISA the power to take regulatory action if its Inspectors are intimidated etc., rather than deferring exclusively to the relevant State. However, we are not sure this is achieved by the current drafting of paragraph (4), which does not refer to the acts or complaints in the preceding paragraphs, and thus makes it difficult to interpret use of the word 'appropriate' here. Also, we do not consider that the Inspectorate should

be the entity issuing Compliance Notices under DR103. We suggest that this paragraph (4) instead refers to an Inspector issuing an instruction under DR99, or to the Compliance Committee or Council issuing a compliance notice under DR103.