

**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.

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 96

Inspections: general

1. The Council shall **before the effective date of any exploitation contract** establish **[an independent Inspectorate as the]** appropriate **mechanisms [mechanism]** for inspection as provided for in articles 153 (5) and 162 (2) (z) of the Convention. **[Inspections performed shall be undertaken by Inspectors who meet the qualification requirements set out by the Council pursuant to Regulation 97(1)].**

1. bis The Council shall approve and maintain a code of conduct for Inspectors and inspections, that takes into account the principles in paragraph (1ter.) and includes provisions on identifying and managing conflicts of interest, and on information management and confidentiality.

1. ter The principles that underpin the Inspectorate are:
- a. independence,
 - a. transparency
 - b. fairness,
 - c. proportionality
 - d. accountability,
 - e. precaution;

1. quarter The Council shall ensure inclusivity, gender equality, and the effective protection of the health and safety, in recruiting and managing its Inspectors.

2. The Contractor shall permit the Authority to send its Inspectors, who [shall upon request by sponsoring States, and may upon request by [any other State Party] or other party concerned] be accompanied by a representative of the sponsoring State, [any other State Party] or other party concerned, [~~in accordance with article 165 (3) of the Convention~~], aboard all vessels and Installations whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract as well as to enter its offices wherever situated. To that end, [States Parties] [~~Members of the Authority~~], in particular ~~the sponsoring~~ any State or States in whose national jurisdiction or on whose vessel the Authority wishes to conduct inspection activities, shall assist the [~~Council, the Secretary General~~] [Authority] and Inspectors in discharging their functions under the Rules of the Authority.

[2.bis Nothing in these regulations shall be construed in any way inconsistently with the exclusive jurisdiction of the flag State over its vessels on the high seas as reflected in article 92 of the Convention; nor the enforcement rights of port States as reflected in article 218 of the Convention.]

5. The Contractor and its agents and employees [~~shall facilitate the actions of~~] [shall cooperate with the Inspectors and give full assistance to] the Inspectors in the performance of their duties, and shall:

(f) Accept the deployment of remote real-time monitoring and surveillance equipment, ~~where required~~ by the [~~Secretary General~~] [Inspectorate], and facilitate the activities of Inspectors in deploying such equipment and having access thereto; and

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

General: There seems to be consensus (or at least a significant majority) that any inspection mechanism must have independence, recognizing that it is not best practice to have the same people who award contracts and collect revenue also police compliance. However, based on interventions at the last meeting it is not clear what institutional structures will be put in place to carry out this responsibility. We believe both the joint submission by Brazil, Chile, and Costa Rica, cosponsored by Federated States of Micronesia, New Zealand and Panama for the establishment of a compliance committee and the joint submission by Norway and Netherlands for the establishment of an independent inspectorate have merit. In general, it seems sensible to us that a rostered staff of Inspectors ('Inspectorate') would report to a specialized Compliance Committee who can take quick decisions on compliance actions based on Inspector's findings. Our proposed amendments for this part of the regulations will reflect that position. That said, we believe that it would be very beneficial to devote more time at the next session (or interessionally) to flesh out the details of these institutional structures pertaining to inspection, compliance and enforcement, such as the Compliance Committee's roles, responsibilities, powers and composition, the establishment and management of a roster of independent inspectors, inspector powers, and working expectations of inspectors (e.g. on board observers, full-time), as these details will significantly influence the text of these regulations and any subsidiary instruments.

Paragraph 1: The Regulations should stipulate that the Inspectorate mechanism must be established before any exploitation commences.

Paragraph 1bis-1quarter: Paragraph 1 bis. references principles in paragraph 1 that do not currently exist. We propose that principles to guide the Inspectorate should be added (perhaps to a new paragraph 1 ter. to avoid overloading paragraph 1) and these should be: independence, transparency,

fairness, proportionality, accountability and precaution. We would also like to see inclusivity, gender equality, and the effective protection of health and safety prioritised by the ISA in selecting and safeguarding the interests of its inspectors, and suggest that this responsibility is expressly assigned to the Council in the Regulations.

Paragraph 2-2bis: Several delegations have previously expressed concern as to whether inspections onshore may exceed the UNCLOS power for the ISA to 'inspect activities in the Area'. As currently drafted the regulation highlights the sponsoring State as the key party for cooperation. We believe this fails to recognise that the port State or flag State for activities in the Area may not be the sponsoring State. DR 2bis recognises the role of flag States and port States, but does not attempt to deal with potential issues arising from jurisdictional conflict. In our opinion, the ISA needs to give significant further consideration as to how the inspection regime will work with port States and flag States who may not be the sponsoring State, and indeed may not even be an ISA member State bound by these Regulations. If ISA Inspectors are lawfully denied permission to board relevant vessels, then the ISA inspection regime cannot operate.

We would welcome a study, as has previously been requested, to consider some of the jurisdictional issues arising between States and the ISA, and would suggest an intersessional event on these complex issues may also be helpful.

Paragraph 5(f): We recommend that there be a requirement for real-time data reporting for environmental monitoring of all Contractors as standard practice, rather than something that requires specific authorization on a case-by-case basis.