

**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 97

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**.

1. The Council shall on the basis of the recommendations of the ~~Commission~~**[Compliance Committee]**, determine the relevant qualifications and experience appropriate to the **[areas of duty]** of an Inspector under this Part. ~~[Based on that the Secretary General will establish a roster of Inspectors.]~~

[1. Alt 1. The Council shall establish a roster of inspectors, based on the recommendations of the Compliance Committee ~~Commission~~ on the relevant qualifications and appropriate experience required to perform their duties under these Regulations. [The roster shall be ~~administrated~~administered by the Inspectorate and reviewed [annually]].

[1.bis **[States Parties]** ~~[Each Member of the Authority]~~ may, subject to the requirements of this regulation, ~~[designate]~~ **[nominate]** its nationals as Inspectors for **consideration, and individual applications may be submitted directly for inclusion in the roster. Nominees and applicants will be considered against the qualification and experience requirements.** **[Subject to considerations of protection of personal data, The roster of Inspectors shall be made publicly available on the Authority’s website.]**

2. The ~~Commission~~**Compliance Committee** shall make recommendations to the Council on the appointment, supervision and direction of Inspectors, and on an inspection programme and schedule, ~~[under the inspection mechanism]~~ **[for the Inspectorate]** established by the Council in regulation 96 (1) and in accordance with the Standards and taking into account the Guidelines.

3. The ~~[Secretary General]~~ **[Inspectorate]** shall manage and administer such inspection

programme, including the appointment of Inspectors at the direction of the Council under regulation 97(1).

[4. The Inspectors shall be independent in the fulfilment of their tasks]

5. ~~[Without prejudice to their enforcement under international law, measures adopted by the Inspectors shall be effectively enforceable by Sponsoring States in their national legal orders. Inspectors shall report to the [Secretary General] in writing any difficulties relating to the enforcement of their measures under national law.~~ The Authority will work with the relevant sponsoring State to ensure that inspections performed by Inspectors are aligned with enforcement at the national level.

7. The Council may, for reasonable cause, remove an Inspector from the roster, based on the recommendations of the [Inspectorate] [or Compliance Committee] ~~Commission or on the recommendations of the Secretary General~~ under regulation 101(2).]

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

Paragraph 1: We prefer the alternative language, though have proposed edits to the original paragraph if maintained. We do believe the determination of qualifications required, and establishment of a roster of inspectors seem duties more appropriately allocated to a Compliance Committee, with specialist knowledge in this area (and who report to Council), rather than a duty for the LTC and Secretariat respectively. We also believe management of the roster of inspectors could be done by either the Inspectorate (e.g. Director-General) or Compliance Committee depending on how these two entities are structured.

Paragraph 1bis: It would be helpful to clarify here that nominees must undergo an objective recruitment process against relevant qualification criteria, before being included on the roster, so nomination is not sufficient in itself to secure automatic appointment. We would prefer to remove the State nomination requirements entirely, and instead to see an open recruitment process, where persons are able to apply directly and be selected against objective criteria, to avoid politicization. This would also widen the process to enable qualified persons to apply who are not nationals of ISA member States. To ensure equitable geographic representation, the recruitment process could include geographic representation criteria.

Also, data protection issues should be considered in making the roster publicly available (for example, not disclosing any personal identifying features). This may be necessary to limit risk of harm to inspectors, as we understand it can be a sensitive role, and there have been some issues of attempted bribery or harassment or retaliation experienced by fisheries observers.

Paragraph 4: More clarity for this paragraph is needed - the statement that 'Inspectors shall be independent' is not clear enough in its meaning to have operational effect, and drafted so as to be enforceable. We suggest this point should be covered by appropriate recruitment and conflict of interest management provisions (see proposed amendment to paragraph 1bis) as well as the code of conduct, and complaint mechanisms, which more specifically indicate what 'independence' means here. We presume it relates to the Inspectors being uninfluenced by financial benefits of exploitation, which may inform the actions of contractors, and/or other limbs of the ISA, but would welcome clarification.

Paragraph 5: We agree with the deletion marked here, as the intention behind the proposed text was not clear, and may have risked infringement on State national jurisdiction.

However, for activities in the Area to be well-regulated, monitoring and enforcement duties fall not only to the ISA, but also to the sponsoring state. If the sponsoring State cannot access the evidence collected by the ISA Inspectors, or the evidence is not collected by ISA Inspectors in a way that is

admissible in national court proceedings, then there will be a gap in the compliance regime. We therefore suggest some wording be included here, to encourage the ISA to develop its inspection measures in a way that aligns with enforcement at the national level.

Paragraph 7: There should be procedures in place to review and update the roster of Inspectors as needed. This does not seem to be captured in DR97 currently, so we suggest adding wording to this effect into paragraph 7.