

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

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.

DR 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.

1 bis. States Parties may, subject to the requirements of this regulation, nominate its nationals as Inspectors for consideration, and for individual applications may be submitted directly for inclusion in the roster. Nominees and applicants will be considered against the qualification and experience requirements. [Equitable geographical representation and gender balance will also be considered, in line with the Convention principle]. Subject to considerations of protection of personal data, The roster of Inspectors shall be made publicly available on the Authority’s website.

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

5. alt 1[The Authority will work with the relevant sponsoring State to ensure that inspections performed by Inspectors are aligned with enforcement at the national level]. Inspectors shall report to the Compliance Committee in writing regarding any difficulties relating to the enforcement of the measures]

7 alt. [The Compliance Committee shall keep the roster of Inspectors under review and updated. The Council may, for reasonable cause, remove an Inspector from the roster, based on the recommendations of the Compliance Committee.]

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

For paragraph 1bis, 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. Indeed, consideration could be given to prioritising nationals of developing countries. 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.

For para 4, while we agree with the intent of the provision we query whether it ' is 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 (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 it could also refer to nationality? Or something else? It is also unclear from this regulation as drafted, whose responsibility it is to ensure this independence, and what the repercussions if an inspector is found not to have been independent. This will make the provision unenforceable. We would welcome clarification, and drafting improvements.

We prefer 5 (alt 1). This relates to matters within the Inspectors' control, and is aimed to ensure that evidence they gather is obtained and shared in such a way with the sponsoring State as to facilitate enforcement proceedings at the national level, via domestic procedures of the sponsoring State. This is important because individual States will have powers and remedies over contractors beyond that available to the ISA, such as asset seizure, or criminal proceedings. In our opinion, alt. 2 would not achieve the same goal. The regulations cannot provide that inspector's measures are enforceable in national regimes. That is a matter for domestic law. We do however like the second sentence of (5)alt 2, as a means of monitoring the success of the inspector's compliance measures, so would suggest that the second sentence be moved to alt. 1.

Lastly, not commenting on the mechanism, we prefer 7alt as it includes procedures to review and update the roster of Inspectors as needed.