

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

DR 96ter

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.

- **Red font** are proposed amendments by the Facilitator in this revised text.
- Our proposed amendments and our questions or comments regarding the facilitator’s remarks are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

1. The Chief Inspector shall **usually** give reasonable notice to a Contractor of the projected time and duration of inspections, the names of the Inspector(s) and any activities that the Inspector(s) are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor. [The activities of the Inspector(s) should in any case not unnecessarily impede activities in the Area.]

2. Where the Compliance Committee or the Chief Inspector have reasonable grounds to consider the matter to be so urgent that reasonable notice cannot be given, the Compliance Committee or the Chief Inspector shall instruct an Inspector to conduct an inspection without prior notification, and shall cooperate with a Contractor to conduct the inspection as soon as practically possible.

3. Inspectors may inspect any relevant documents **[or items]** necessary to monitor a Contractor’s compliance under its exploitation contract and the Rules of the Authority which include inter alia, all recorded data and samples and any ships or Installation used by the Contractor to carry out Exploitation activities and activities related to such exploitation activities in the Area, including its log, equipment, records and facilities, as well as interview relevant personnel.

4. The Contractor, **[its subcontractors, agents and employees]** shall cooperate with Inspectors and give full assistance to Inspectors in the performance of their duties, and shall:

....

(b) bis. Provide reasonable facilities, financed by the Contractor, including, **where appropriate**, food and where feasible accommodation, to Inspectors;

.....
(f) Accept the deployment of remote real-time monitoring and surveillance equipment [in a uniform manner and] as required by the Council, ~~or~~ the Compliance Committee [, or Chief Inspector];

.....
(f)ter Not obstruct, intimidate or interfere with Inspectors in the performance of their duties, or representatives of sponsoring States, any other State Party, or other party concerned who accompany these Inspectors.

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

As a general comment, we believe there needs to an agreement by Council members whether they envision inspectors living aboard vessels during all operations, periodically, or not at all and only expect inspections to occur in port. This has implications on the practicalities of unannounced inspections and the expectations of remote monitoring equipment in the event the ISA is solely relying on those as the ‘inspector’ during day to day operations. Furthermore, and as discussed below, there needs to be a discussion around jurisdictional issues raised by the interplay of the ISA regime, with the sponsoring State, the flag State and the port States’ jurisdictions to ensure an effective ICE regime that does not contain inadvertent loop holes.

We believe it is important for inspectors to retain the ability to perform unannounced spot-checks, so would insert the word “usually” before “give reasonable notice” in para 1.

We note the concerns expressed by Korea and China that flag state jurisdiction is a potential problem for the ISA’s ICE regime, but we disagree that it is an unassailable obstacle to unannounced inspections (which - like Ireland and others, we believe are an essential part of the regime). We understand that the climate of not knowing when or if an operator will get inspected, is in itself one of the most effective incentives for compliance in any regulatory regime. We would propose the Council to consider this jurisdictional matter more, and to ensure the regulations appropriately deal with it.

This may be, for example, require in the Regulations that all vessels used in exploitation in the Area be registered with flag states who are also member states of the ISA, and thus subject to the regulations - including obligations to cooperate with inspections. Another option would be providing for the ISA to enter into bilateral arrangements relating to inspections with relevant flag states in advance of the contractors’ vessels’ disembarkation. The same approach could also apply to port states in which vessels are docked or in which ore is off-loaded. The Regulations could also require an applicant for exploitation to describe in their application for a Plan of Work, which ports and flag registries it will be using, so ISA can assess at the outset, taking into account respective State jurisdictions (including also mechanisms in place in the sponsoring State), whether the inspection regime can operate effectively, before it approves a contract. Because without a fully engaged and cooperative set of States, with relevant resources and legal mechanisms, across the full range of relevant jurisdictions, there will be loopholes and gaps in the regulatory regime, that can be exploited to evade compliance and enforcement. So we strongly recommend that Council focuses its attention to the jurisdictional issues raised by the interplay of the ISA regime, with the sponsoring State, the flag State and the port States’ jurisdictions.

Regarding para. 4, if the final version of the defined term ‘Contractor’ includes employees, subcontractors, and agents (as it is drafted); then here (and throughout the Regulations) the drafting can be simplified to remove extraneous references to agents, employees etc. If it doesn’t, then ‘subcontractors’ should be added here.

In para 4b)bis) we believe that “where appropriate” in relation to provision of food and ‘where feasible’ in relation to accommodation is inappropriate language. inspectors should be given accommodation and food when this is required. It seems unlikely that inspections would take less than a day.

In para 4(f), we seek clarification on what is meant by “in a uniform manner”. Perhaps this is intended to establish that the deployment of remote monitoring equipment should be mandatory for all contractors? Which we would support, but would suggest clearer wording, and alignment with DR102, which also requires remote monitoring systems. We would also suggest that this may be a matter for Standards (which can be

updated from time to time as monitoring tech evolves), rather than requirements of ISA organs, so that it's clear it's mandatory for all.

After para 4(f), we suggest reintroducing the previous language regarding obstruction and intimidation. It is important that there is an obligation on contractors not to impede or intimidate inspectors, otherwise there is no recourse to any sanctions or compliance action for such actions. Furthermore this is important for the welfare of the Inspectors to whom the ISA has a duty of care. Reporting such incidents alone as now suggested in DR 100.3 is insufficient and leaves open the possibility that obstruction of inspection is not considered non-compliance. Other considerations that the ISA may like to consider as it develops its Standards for inspections, and which relate to the rights and well-being of inspectors: is there radio equipment on board for the observer to use in case of an emergency? What is the prescribed process if an observer reports harassment/intimidation? Is there a prescribed process if an observer dies/is reported missing?