

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

Black font, red font, and grey text-boxes are replicated from the Draft Regulations text.

Blue font represents commentary or edits proposed by The Pew Charitable Trusts.

Regulation 100

Inspection Reports

1. No later than 30 Days after the end of an [routine] inspection [and 7 Days after the end of urgent inspection], the Inspector shall [prepare][deliver]- a report in accordance with the template and other requirements set out in the applicable Standards setting out, the findings and [seeking clarification and providing] [any] recommendations for improvements in performance, procedures or practices by a Contractor. The [Chief] Inspector shall send the report to the Compliance Committee and the Secretary General, [who shall send a copy of the report to the Contractor and its Ssponsoring State or States, as well as the relevant adjacent coastal State or States or flag State referred to in paragraph 2bis of Regulation 99]].

1. bis The Contractor and the Sponsoring State or States, [as well as the relevant adjacent coastal State or States or flag State referred to in paragraph 2 bis of Regulation 99] [shall] [may] within- 30 Days [after the end of a routine inspection and 7 Days after the end of urgent inspection] [of the date of receipt of the Inspector's report,] provide to the Secretary-General comments on the findings and [seeking clarification and providing] recommendations, including details of any action taken or to be taken in accordance with the findings and recommendations of the Inspector's report. The Secretary-General shall transmit [any] [such] comments to the Compliance Committee.

2. The Compliance Committee shall pursuant to Regulation [102 bis] [96 bis paragraph 6], [in their annual] [from time to time] report to the Council [and] include details on the findings and recommendations following the inspections conducted in the prior Calendar Year and shall make any recommendations to the Council on any enforcement action to be taken by the Council under these Regulations and an Exploitation Contract and taking account of any regulatory action taken by the Ssponsoring State or States or corrective actions taken by a Contractor to address the findings or recommendations.

3. The [Chief Inspector] shall report to the Compliance Committee and the SecretaryGeneral on any acts of violence, [bribery, intent to bribe] intimidation, or abuse against or the wilful obstruction or harassment by any person of an Inspector, or a representative of a Sponsoring State, State, or other party concerned who accompanies the Inspector in the course of their duty, or the failure by a Contractor to comply with paragraph 4 of Regulation 96 terbis.

3. bis The Secretary-General shall report any- such acts or failure to comply with Regulation 96 terbis immediately to the Sponsoring State or States and the flag State of any ship or Installation concerned, and to the national State of the Inspector for consideration of the institution of proceedings under national law. Appropriate measures may also be taken by the Compliance Committee in accordance with Regulation 103.

Comment

It has been requested by several delegations that a paragraph should be inserted that covers what the Compliance Committee should do with the information provided, including what immediate measures needs to be taken in response to the Inspector's findings and recommendations. In this respect there is a need for agreement on the policy and process that is to be followed.

We agree with those raising the comment cited in the President's text-box here. Paragraph (1) describes the submission of an inspection report (and Contractor and Sponsoring State comments) to the Compliance Committee. Paragraph (3) describes reports to the Compliance Committee about acts of intimidation against Inspectors. Neither paragraph covers **what the Compliance Committee should do with the information** contained in those reports, particularly if the Inspectors' findings and recommendations suggest a need for urgent action. We presume the Compliance Committee would assess the information provided and decide what regulatory action to take in accordance with the Compliance Strategy (e.g. whether to instruct additional inspection activities, or to take regulatory steps under DR103, and involve the Council). We see this covered in the last sentence of DR100, but it seems misplaced in this paragraph (3 bis), following a sentence about reporting to sponsoring States.

This issue conflates with **paragraph (2)**'s now rather confusing drafting. It seems to cover two separate things: a periodic general report on compliance from the Compliance Committee to Council, and specific recommendations from the Compliance Committee to Council on enforcement action required in individual cases. Which one of these is intended needs to be clarified from the drafting. Or if both are intended, they should be separated into distinct provisions. To address both of these inter-related points, we suggest:

- Re-drafting paragraph (2) so it requires an annual report from the Compliance Committee to the Council that shows trends or issues that may inform review or amendment of the ISA's compliance regime; and
- Adding a new standalone paragraph (1 ter) in DR100, between paragraphs, to require the Compliance Committee, upon receipt, to consider any inspector reports (or comments about them) to determine what compliance actions if any need to be taken, including pursuant to DR103.

According to DR92 paragraph (1)(e quat) and also (1)(l), inspection reports will be published on the Seabed Mining Register. We support this and consider DR100 should include a corresponding obligation for the Secretary-General to publish the reports – e.g. in paragraph (1) (as suggested by the United Kingdom during the July 2024 Council session).

We have some **drafting suggestions**:

- In **paragraph (1)**, we believe the wording “[*seeking clarification and providing*]” has been inserted by error and does not fit here; it was intended for paragraph (1 bis). It should be deleted. Paragraph (1) should require findings and recommendations (only).
- Similarly in **paragraph (1 bis)**:
 - We believe the wording “[*after the end of a routine inspection and 7 Days after the end of urgent inspection*]” has been inserted by error and does not fit here; it was intended for paragraph (1). It should be deleted. We believe paragraph (1 bis) is intended to speak to a deadline 30 days after receipt of report.
 - Perhaps the deadline could be deleted in paragraph (1 bis) altogether? It seems to us that a party should not be prevented from commenting on an inspection report after 30 days if it so wishes. Comments that can inform the ISA's compliance work should be welcome at any time. Equally a party should be able to opt *not* to comment at all, which may be prevented by using ‘*shall*’ in (1 bis).
 - We also question whether it is necessary or helpful to prescribe what the comments can or must contain (‘*seeking clarification and providing*’ recommendations’). We think just ‘*comments*’ is fine.
- **Paragraph (3)(bis)** should cross-refer expressly to paragraph (3), for the meaning of ‘*such acts*’ to be clear i.e. it is referring to mistreatment of Inspectors. Whilst we welcome the reference to a flag State, we would suggest adding here “where relevant”. There may be matters not applicable to the shipping operation or the flag State, but as drafted there seems no flexibility here to tailor reporting accordingly.
- As a general point, we wonder whether the **singular use of ‘Inspector’** throughout DR100 is accurate, in the case that a team of inspectors would be involved in any report, as well as the Chief Inspector?