

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.

**Part XI**

**Inspection, compliance, and enforcement**

**Section 1**

**Inspections**

**Regulation 96**

**The inspection mechanism**

[1. The [Council] shall establish a Compliance Committee, [within the Commission], pursuant to Regulation ~~[102]96-bis~~. [The Compliance Committee shall oversee the Authority's inspection, compliance and enforcement function pursuant to these Regulations, and shall approve and keep updated the Authority's Compliance Strategy.

2. The ~~[Secretary-General]~~[Compliance Committee] shall appoint an officer with suitable qualifications to be Chief Inspector. The ~~[Chief Inspector]~~[Inspector] shall [report to the Compliance Committee and shall] undertake the day-to-day management and administration of a roster of Inspectors and inspection programme in accordance with the Authority's Compliance Strategy.

3. The Council shall, on the basis of the recommendations of the Commission, approve and maintain a code of conduct for Inspectors [based on the principles of independence, transparency, accountability, proportionality, expertise, probity] and nondiscrimination.]

*General comment on structure*

The institutional structure for the 'Compliance Committee', to perform the ISA's inspection, compliance and enforcement ('ICE') functions remains unresolved, despite at least 3 years' intensive and targeted discussions between member States on this specific issue. We believe – though we may have lost track – that there have been proposals to:

- Create a sub-committee of Council,
- Create a new committee, reporting to Council,
- Create a committee that combines LTC and Council members,
- Create a sub-committee of existing LTC members,
- Create a new chamber within the LTC,
- Use the LTC as it already functions.

Progress towards consensus is hard to discern at this point. This issue is a huge concern to us as an observer organization focused on the protection of the marine environment. Unless and until the ISA can demonstrate the institutional capability to police its regulations, then the regulations will be - at best - toothless, and at worst will serve to permit mining without effective restraints. The ISA Council must get this right. But we also wonder if the delays and disputes may underlie a greater existential issue, i.e. the inherent challenge of a multilateral and political

organization like the ISA ever being able to monitor and enforce compliance with its rules in an independent, accountable and effective way, especially where the contractors are themselves States?

We note that this discussion takes place in a context where 30 ISA exploration contracts are already underway, and increasingly moving towards more environmentally harmful activities and test-mining. While ICE functionality remains unresolved at the political level, we have seen the interim creation of CARMU in the Secretariat - a body that is neither clearly accountable to the Council nor the LTC, and which may contravene many of the guiding principles for ICE that member States do appear to agree upon (e.g. in DR96(3)) - independence, transparency, accountability, expertise, probity, consistency with UNCLOS, and geographical representation.

We urge Council member States either to find an appropriate structure and apply it across all of the ISA's contracts as a matter of urgency, or to bring openly to the discussion the bigger question as to whether the necessary structure is possible to achieve at all - whether the ISA can ever really constitute the fit-for-purpose compliance function that humankind needs?

#### *Specific comments on drafting*

The current drafting of DR96 does not specify that the system and personnel for the ISA's inspections should be **in place before approval of any Plan of Work for Exploitation**, though that point has been raised by several States in previous Council sessions.

We strongly support the insertion of the new final sentence in **paragraph (1)**, which helps clarify the role of the Compliance Committee, and the imperative that any regulator has a compliance strategy to which it will adhere. We note that DR96(1) does now cover some compliance and enforcement components – which we support – but which is not reflected in the regulation title. We would suggest amending the title to '*Institutional framework for inspections, compliance and enforcement*'. DR102 ('Compliance Committee') could be moved back alongside DR96, and greater clarity inserted into DR96 about who is responsible for day-to-day ICE activities *other than inspections* e.g. management of compliance promotion activities, enforcement procedures, public reporting and engagement on ICE issues, assessing effectiveness of the ICE regime – and generally implementing the Compliance Strategy. We do not currently see this covered.

We support the need for a Chief Inspector, reporting to the Compliance Committee, as indicated in **paragraph (2)** of DR96. To settle the drafting as to the appointment, we would find it helpful to understand whether the Chief Inspector will be an officer of the Secretariat, or whether there is another option. And if the Chief Inspector *is* an officer of the Secretariat, does that mean they must be subordinate to the Secretary-General? We had understood proposals under discussion that envisaged the Chief Inspector maintaining some degree of independence from the Secretariat. This needs to be clarified. We also recall statements made and supported by at least four member States during the 2023 Council sessions that the terms for recruitment should be discussed early (and costed), aligned with UN employment conditions, with the Chief Inspector at a high grade.

With regard to **paragraph (3)** we support the principles listed for the code of conduct for Inspectors.