

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 97

Inspectors: Appointment and supervision

1. The Council, shall on the basis of the recommendations of the ~~[Commission]~~**[Compliance Committee]**, determine the relevant qualifications and experience for Inspectors to be included in the Roster of Inspectors appropriate to the areas of duty of an Inspector under this Part.

1 bis States Parties may, subject to the requirements of this Regulation, nominate ~~its nationals as~~ **[individuals for]** ~~[Inspectors for consideration, and]~~ **[individual applications may be submitted directly for]** inclusion in the Roster of Inspectors. 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~~**at** the Authority's website.

2. The Compliance Committee shall make recommendations, to the Council on the appointment, supervision and direction of Inspectors included in the Roster of Inspectors, and on an inspection programme and schedule for the Authority in accordance with any applicable Standards and taking into account any applicable Guidelines.

3. The inspection programme shall be ~~[adopted]~~ **and** ~~[overseen]~~ by the Council, ~~overseen and [managed]~~ **[administrated]** by the Compliance Committee, ~~[and implemented by the Chief Inspector and the Inspectors]~~.

4. The Inspectors shall be independent in the fulfilment of their tasks and shall comply with the Inspector Code of Conduct. ~~[be guided by transparency, accountability and non-discrimination]~~

[5. The Authority will ~~cooperate~~[engage]** with the Sponsoring State or States 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.]**

6. Inspectors may be required to undertake relevant training programmes, ~~[including but not limited to project and ship instructions, health and safety, as well as undergo fit for work medical evaluations]~~, at the request of the Council, based on the recommendations of the Compliance Committee. The Secretariat shall facilitate the requisite trainings and evaluations.

7. The Compliance Committee shall keep the Roster of Inspectors under review and updated. The Council may, **[following non-compliance with the Inspector Code of**

Conduct~~1,2~~ remove an Inspector from the Roster of Inspectors, on the basis of the recommendations of the Compliance Committee.

Comment

There seems to be disagreement as to whether the nominations should solely be state nominated or whether self-nomination also should be possible. This is a topic that needs further discussion and resolution. The text in paragraph 1 bis is thus still retained in square brackets and stricken through.

In relation to paragraph (1), like others who commented in Council's July 2024 session (Bangladesh, Costa Rica, France, Ireland, India, the Netherlands and Ghana on behalf of the African Group), we prefer to retain the option for **individual applications** to be submitted directly for inclusion to the roster. Indeed, we would propose 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 politicisation. As a drafting point, we believe the comma is meant to go after "shall," not after "Council" so that the first sentence begins, "*The Council shall, on the basis...*"

We also wonder if it is appropriate to include recruitment criteria for Inspectors in a high-level legislative instrument such as the Regulations? We consider the ISA has an opportunity here to allow for less- or qualified and experienced personnel to apply and be provided with training on the job. We suggest this in recognition of the limited scope of personnel engaged with deep-seabed mining inspection currently world-wide, and the ISA's mandate to develop capacity and opportunities for **nationals of developing States** (e.g. Article 274 of UNCLOS).

We think **paragraph (2)** should reference both the Compliance Strategy, and the advice of the Chief Inspector, in relation to the design of the inspection programme. Indeed, if the Compliance Strategy has been approved by Council, we wonder if it is even necessary for the Council also to approve an inspection programme developed under that Strategy – as per current **paragraph (3)**? We would like clarification about the timing requirements for the approval of the inspection programme: we are unclear whether this is done on a one-off basis, or perhaps it is to be done annually? In any event, we suggest making allowances for variations from the programme and schedule where there is good cause, for instance if there is a notification requesting an inspection from a State, or if a Contractor reports an Incident.

While we welcome the intention behind **paragraph (4)**, we suggest editing it further, so that it reads only: '*The Inspectors shall be independent in the fulfilment of their tasks and shall comply with the Inspector Code of Conduct*'.

This is because the use of the word 'independent' here is unclear and open to interpretation. It may relate to the Inspectors being uninfluenced by financial benefits from Exploitation, or by obligations arising out of being part of another organ of the ISA, or by nationality – or all three(?) Indeed, a common sense interpretation of the word 'independent' would mean acting for themselves (not under the ISA's authority or payroll), which cannot be the intention! In any case, inclusion of the term here also seems unnecessary as we would expect requirements for impartiality and neutrality from inspectors to be expounded upon in the Code of Conduct. In addition, the drafting of this provision makes it unclear to us whose responsibility it is to ensure this independence and compliance with the Code of Conduct (Chief Inspector? Compliance Committee?), and what the repercussions would be if an Inspector is found not to be non-compliant. The passive drafting makes the provision unenforceable, as it reads as a simple statement of fact.

We are in favour of retention of **paragraph (5)**. We believe the intention behind it (i.e. the ISA should aim to maximise the usefulness of its Inspectors' evidence-gathering for use at the national State level) is important and should be captured either in this regulation, Compliance Strategy or inspection rules of procedures. As one example, if the Inspectors' reports or other evidence collected by Inspectors from the ISA are not admissible in evidence in the sponsoring State's court system, then this would be an obstacle to effective enforcement and therefore the entire regime for activities in the Area.

In **paragraph (6)** we question whether the Council would need to be involved in setting a training programme for individual Inspectors, as is implied. This seems like inefficient micromanagement of a function that could be performed by the Chief Inspector and the Compliance Committee.