

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 bis**

**Inspectors' Functions and Responsibilities**

1. ~~[In conducting the inspections, the]~~ Inspectors shall:

(a) Carry out inspections in accordance with internationally accepted principles of good seamanship so as to avoid **[as much as possible]** risks to the safety of life at sea, and follow reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor and the master of the ship ; ~~with due regard to the observance of good seamanship and~~

(b) Avoid **[as much as possible]** interference with the safe ~~[and normal]~~ operations of the Contractor and of ships and Installations.

(b) bis Comply with ~~the Inspectors Authority's Code of Conduct for Inspectors and inspections established pursuant to draft Regulations 96 (31) bis.~~

(d) Indicate in their reports all ships, Installations, equipment, facilities, data and samples monitored or otherwise examined, all documents reviewed or copied, all questions posed to the Contractor or any personnel. 2. [Omitted. Contained in Regulation 96 quater, paragraph 2]

3. An Inspector ~~shall be bound by strict confidentiality provisions and~~ must have no conflicts of interest in respect of all duties undertaken and shall conduct his or her duties in accordance with the ~~Inspectors Code of Conduct.~~**Inspectors Authority's code of conduct for Inspectors and inspections.** Inspectors shall have no financial interest in any activity relating to Exploration and Exploitation in the Area. They shall not disclose, even after the termination of their functions, any industrial secret, proprietary data or other Confidential Information coming to their knowledge by reason of their **functions** ~~duties~~ under these Regulations.

**Comment**

It has been suggested by some delegations to include the text of draft regulation 97 bis in the Inspectors Code of Conduct. For the time being it is retained here for further discussion.

We recall several member States (e.g. the African Group, Bangladesh, France) in 2024 emphasising that, as a matter of safety and law, inspectors who are passengers on a Contractor's vessel must **comply with any instructions from the ship's captain, without applying a 'reasonableness' caveat** to it. But do not see relevant amendments made. Conversely, it would not make sense for inspectors to be obliged absolutely to obey instructions from the regulated entity they are there to inspect (the Contractor). We suggest the references to 'reasonable' and 'Contractor' are removed in sub-paragraph (1)(a).

Similarly we recommend **deletion of sub-paragraph (1)(b)**, as it was raised by various States previously that, whilst Inspectors must not interfere with the safe operations of a ship (which is covered in sub-paragraph (a) already), they

may at times take action that interferes with Exploitation operations, where this is necessary and appropriate in the course of their duties. (As indicated by the proposal for a “do not disturb” notice in DR98(1)(h bis), for example).

**Sub-paragraph 1(d)** reads oddly, as it covers the content of a ‘report’ that has not previously been mentioned. We suggest this be amended to set a specific obligation upon Inspectors to make a contemporaneous record of every inspection, and then to state the required elements of that record. (We use ‘*record*’ as we think the provision here should be about ensuring a reliable record of evidence, rather than dictating what should be included in the subsequent reporting to the Compliance Commission or the Council). NB we notice a similar point is covered in DR98(5) (‘Inspectors’ powers’) We suggest that is moved from there, and merged into this DR97bis(1)(d).

We like the wording of **sub-paragraph (3)** but note overlap with sub-paragraph (1)(b bis), also DR97(4). These could be merged.