

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> SESSION:  
COUNCIL - PART I**

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](mailto:council@isa.org.jm).

**1. Name of Working Group:**

Informal Working Group on 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 96alt (Based on the facilitators note we are going to focus our comments on DR 96alt instead of DR 96)

**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.**

**Alt. Regulation 96**  
**Inspections: mechanism**

[1 bis Inspections shall be undertaken by Inspectors who meet the qualification requirements set out by the Council pursuant to Regulation 97(1). The Inspectors shall be guided by transparency, accountability, independence, and the precautionary approach. In their ~~election~~ recruitment, equitable geographical representation and gender balance shall be taken into account.]

1 ter ~~The Compliance Committee shall, subject to the approval of the~~The Council shall, taking into consideration the recommendations of the Compliance Committee, appoint an officer with suitable qualifications and appropriate experience in compliance assurance, and health, safety and environment in marine mining or other related marine extractive industries, to be Chief Inspector. The Chief Inspector shall report to the ~~Compliance Committee~~Council and shall undertake the day-to-day management and administration of the roster of Inspectors and inspection programme under the direction of the ~~Committee~~Council and other related duties set out by the ~~Committee~~Council in writing.

1. quarter. The Council shall on the basis of the recommendations of the Commission approve and maintain a code of conduct for Inspectors and inspections, prior to the approval of a plan of work, that takes into account the principles in paragraph (1bis) and includes provisions on identifying and managing conflicts of interest, and on information management and confidentiality.

2. A Contractor shall permit the Authority to send its Inspectors, who shall upon request by sponsoring States, ~~or any other State Party~~ ~~or other party concerned~~ be accompanied by a representative of the Sponsoring State, other State Party ~~or other party concerned~~, or any person reasonably required to assist an Inspector including

an interpreter, aboard all vessels and Installations used in the Area by the Contractor to carry out Exploitation activities under an exploitation contract [as well as to enter its offices]. To that end, States Parties members of the Authority, in particular the Sponsoring State or any State or States in whose national jurisdiction or on whose vessel the Authority wishes to conduct inspection activities, shall assist the Compliance Committee, the Chief Inspector and Inspectors in discharging their functions under the Rules of the Authority.

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

General Comment regarding ICE structure: We think the hybrid model presented has a lot of merit and are generally supportive of it. However, we continue to have some reservations about the structure as presented.

For instance - while we support the creation of a Compliance Committee, we wonder if such a Committee would be better placed under the Council or as a senior board of the Inspectorate perhaps, rather than being managed by the LTC. We suggest this for reasons of capacity, specialised expertise, responsiveness, and independence.

- Expertise - LTC members are elected on the basis of qualifications set out in Article 165. This does not include regulatory, inspections, compliance, or enforcement expertise. If the LTC in its current composition is found to not have the requisite experience will another election be held prior to approving of any mining operations?
- Independence and workload – the compliance committee was partially proposed recognizing the increasing workload of the LTC. If the CC were to be situated under the LTC and be composed of LTC members it isn't clear to us how this alleviates the ever growing workload of the LTC. Before allocating a new role to the Commission, there should be some independent assessment carried out to evaluate the LTC's current performance, workload, accountability and governance systems etc.
- Conflicts of interest - the current LTC membership includes persons directly employed by Contractors. This could present an unmanageable conflict of interest, if the LTC is also the body responsible to inspect those Contractors.
- Relationship between the LTC CC and the wider LTC – it is unclear to us if recommendations made by the LTC Compliance Committee still have to be approved by the whole LTC? We assume they would as UNCLOS does not seem to permit a subset of the LTC to make recommendations to Council without the rest of the LTC, particularly given the role for supervision of activities in the Area and supervision of a staff of inspectors, specifically allocated to the LTC by UNCLOS.
- Responsiveness – we are concerned that in situations where a suspension of operations is urgently needed, it first has to be considered by the LTC CC, then the LTC and then go to the Council – this will slow down the process, and introduce an unnecessary level of bureaucracy.

Comments for textual proposals:

In para 1bis, we support the principles proposed (though we note the original 1 bis included 'fairness' and 'proportionality' which could also be added here). This line about inspector principles may also be better placed into a separate regulation, rather than being mixed in with the remainder of 1 bis which focuses on recruitment. We are also not sure 'election' is the right terminology to use for the recruitment of inspectors.

Regarding paragraph 1ter, we support the idea of a Chief Inspector responsible for the day-to-day management of the roster of inspectors as a critical aspect of any ICE mechanism. As mentioned previously, we do not consider the LTC in its current arrangement to be suitable to manage day to day operations. But we would welcome clarification about what body the Chief Inspector is being appointed to, and upon what terms of conditions this appointment will be made. From this drafting it sounds like a sub-committee of the LTC is appointing the Chief Inspector, but we are unclear whether it has legal personality and powers of employment to do so. We had understood from the conversations in the intersessional working group, and it was our preference, that the Chief Inspector be employed by and accountable to the Council. We recommend this provision be re-drafted accordingly.

Regarding paragraph 2, the final sentence now attempts to deal with potential issues arising from jurisdictional conflict. Generally, we believe the ISA (and these regulations) needs to give further consideration as to how the inspection regime will work with port States and flag States who may not be the sponsoring State, and indeed may not even be an ISA member State bound by these Regulations. If ISA Inspectors are lawfully denied permission to board relevant vessels, then the ISA inspection regime cannot operate. Equally enforcement activities in the event of unlawful mining may be difficult, if there are not arrangements in place with the port State, to which the minerals are transported and offloaded. While the Regulations currently recognize the different duties and jurisdictions between ISA and States, they do not attempt to deal with potential conflict. This may prove a problematic gap. One option, for example, would be for the ISA in these Regulations to require contractors only to use vessels registered with ISA member States and ports located in ISA member States. This would at least ensure that the Regulations that purport to apply to flag and port States would have force. As previously raised, further technical studies or inter-sessional working in this area may be helpful.