

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL - PART II**

Informal Working Group - Inspection, Compliance and Enforcement

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@isa.org.jm.

1. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

2. Please indicate the relevant provision to which the textual proposal refers.

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3. 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.

- The facilitator’s proposed amendments are reflected in red.
- Our proposed amendments are indicated as in-line edits in blue. Proposed deletions of text proposed by the facilitator appears in strikethrough and bold.

1. If, as a result of an inspection, an Inspector has ~~evidence~~ [reasonable grounds] that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of Serious Harm to the Marine Environment, or is otherwise in breach of the terms of its exploitation contract, the Inspector ~~may~~ [shall] give any instruction he or she considers reasonably necessary to remedy the situation, in accordance with the Standards, including:

- a. A written instruction requiring a suspension in mining activities for a specified period, or until such time and date as the Authority and Contractor agree;
- b. A written instruction placing conditions on the continuation of mining activities including a requirement to undertake a specified activity in a specified way, and within a specified period or at specified times or in specified circumstances;
- c. A written instruction that the Contractor must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition; and
- d. A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring.
- e. A written instruction prohibiting the Contractor from continuing or undertaking activities.

3. Any instruction issued under paragraph 1 above shall be in force for a specified period, not exceeding seven Days, after which it lapses. The Inspector shall report immediately to the [Secretary-General] and to the Contractor’s sponsoring State or States that an instruction has been issued under paragraph 1, and where the issue remains unresolved the ~~Secretary-General Authority~~ may thereafter exercise the powers conferred upon ~~it the Secretary-General~~ under regulation 103. ~~[The Secretary-General shall exercise these powers to prevent~~

~~probable imminent danger to the health or safety of any person or probable, imminent, and serious harm to the environment~~

4. Please indicate the rationale for the proposal. [150 word limit]

Regarding **paragraph (1)**, we support the proposed language change at the beginning of the provision from 'may' to 'shall'. This is more consistent with a mandatory enforcement programme, which can bring greater clarity, predictability and equity to an inspectorate programme, compared to reliance upon solely discretionary powers.

We also agree with the insertion of the reference to Standards as these should be developed to explain in detail the threshold for use of any ISA organ's inspection or compliance powers.

Regarding **paragraph 1(a)**, and the scope of powers conferred upon Inspectors by these Regulations. We consider that such scope may vary depending on whether the Inspector is acting on behalf of the Secretary-General, or on behalf of the Council, which is yet to be established. While the Council has powers to suspend contracts via emergency orders (under UNCLOS Article 162(w)) or to suspend rights under contracts where there have been serious, willful, persistent breaches of contract or failure to comply with a binding court judgement (under Annex III to UNCLOS), while the Secretary-General does not have such powers. Perhaps this may be another factor relevant to determining the reporting relationships between an Inspectorate and other organs of the Authority. However, the Council's relatively infrequent meetings, as Italy's intervention reminded us, should be factor relevant to considering the need for a compliance committee to ensure that the Council's oversight and accountability functions are sufficiently engaged.

Regarding **paragraph 1(e)**, we suggest a provision be added which provides for the possibility that certain activities could be suspended without suspending the entire operation as in (1)(a). Where lighter-touch regulatory powers can be used to achieve the desired aim, they should be. And the regulations needs to enable this, by containing a range of powers, escalating in force.

Finally, with regards **paragraph (3)**, we do not agree with the wording proposed to be introduced as a new final sentence. This seems like a restatement of points already made, but also has the potential of unnecessarily narrowing the limitations and conditions on the various powers set out in paragraph 1, which should be avoided.