

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

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.

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

Pew Charitable Trusts

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

DR 99

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.

Note: Council amendments are in **Red and Pew comments are in **Blue**.

1. If, as a result of an inspection, an Inspector has evidence 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 relevant Standards**, including:

2.(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;

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 the Council** 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 Authority ~~Secretary-General~~ may thereafter exercise the powers conferred upon it ~~the Secretary-General~~ **and shall endeavor to do so before the Inspector’s instruction lapses.**

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

Regarding paragraph 1, The proposed change from ‘may’ to shall’ is 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. ‘When an inspector sees a violation, they should be obliged to issue a citation unless the violation is minor and can be corrected during the course of the inspection.’ [Source: Mark Squillace. 2021. Best regulatory practice for deep seabed mining.](#)

As mentioned previously, Standards and guidelines should be developed to flesh out what the threshold is for use of any ISA organ’s inspection or compliance powers. Rules should be clarified for when inspectors can act immediately versus requiring further authority or decision from another ISA organ. Source: Pew / Resolve 20919 Inspectorate Workshop report (copy: [here](#)).

Regarding paragraph 3, this provision seeks to find a balance between not affording any individual Inspector with excessive power, while also recognising that an Inspector would be the person on the scene, and so needs

to be appropriately empowered to act where there is urgency. A 7-day time period is therefore proposed, to enable the relevant organs of the ISA to review the Inspector's instruction.

General comment: Various member States (e.g. Japan, France, Italy, Tonga, Germany, Belgium) noted that the powers conferred upon Inspectors by these Regulations must not exceed the mandate provided by UNCLOS. Clarification was requested from the LTC as to whether a decision to suspend mining (albeit for a maximum duration of 7 days - see paragraph (2), below) could be taken by an Inspector acting with delegated authority. The clarification is yet to be provided, but may vary depending on whether the Inspector is acting on behalf of the Secretary-General, or on behalf of the Council. While the Council has powers to suspend contracts via emergency orders (UNCLOS Article 162(w)) or to suspend rights under contracts where there have been serious, wilful, persistent breaches of contract or failure to comply with a binding court judgement (Annex III), the Secretary-General does not have any such powers.