

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

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.

1. Name of Working Group:

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.

Draft Regulation 99

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.

The facilitators’ proposed amendments are reflected in **red**.

Our proposed amendments and our questions or comments regarding the facilitator’s remarks are indicated as in-line edits in **blue**. Where we propose deletions of the facilitator’s text this is shown **in strikethrough and bold**.

1. If, as a result of an inspection, an Inspector has [reasonable grounds] **[to determine]** 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 [shall] give any instruction he or she considers reasonably necessary to remedy the situation, in accordance with the Standards, including:
 - (d) ~~[A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring.]~~ **[A written instruction requiring a suspension in some or all mining activities for a specified period.]**
2. An instruction under paragraph 1 above must be given to the person designated by the Contractor or, in his or her absence, the most senior employee available aboard the vessel or Installation to whom the instruction can be issued. **The Inspectorate shall also request the Secretary-General to provide a copy of the instruction, and notice that it has been issued, to the Contractor’s sponsoring State or States.**
3. Any instruction issued under paragraph 1 above shall be in force **[until the Contractor has executed the instruction] [for a specified period, not exceeding seven Days, after which it lapses]**. **[Upon receiving information from the Contractor about steps taken to implement the instruction, the Inspectorate shall decide, as soon as possible and within no more than**

three Days, whether the instruction has been complied with by the Contractor]. The ~~[Inspector]~~ [Inspectorate] shall report immediately to the Compliance Committee Secretary-General, ~~[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 ~~[Secretary-General]~~ [Inspectorate] Compliance Committee may thereafter exercise the powers conferred upon the it ~~[Secretary-General]~~ [Inspectorate] 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 [arising out of activities in the Area].~~

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

Regarding paragraph 1 subparagraph d, we suggest two drafting amendments to paragraph 1(d). The insertion of 'some or all' before 'mining activities' to indicate that certain activities could be suspended without suspending the entire operation; and the deletion of 'mining' before 'activities' to harmonize terminology with other parts of the Regulations, and to ensure all Contractor activities, including those ancillary to mining, are not excluded from the scope of this power .

The organs of the ISA that are cited in this DR 99(3) may need re-consideration upon further discussion on the receptive roles of the Secretary-General, Inspectorate, Compliance Committee and Council. We would suggest that the Secretariat should be responsible to send notice to the sponsoring State (moved to paragraph 2), and that the Inspectorate would report to the Compliance Committee, who in turn reports to the Council and may exercise powers under DR103.

The final sentence of paragraph (3) should be deleted. The reference to the Secretary-General exercising these powers is incorrect. Also it seems the intention behind the insertion was to remove discretion in the case of imminent threat to life etc. This is already covered by use of 'shall' in DR 99(1). However, the drafting proposal here may have unintended consequences, as it is readable as imposing a limitation such that inspector powers can only be used where there is such imminent danger, which by our understanding was not the intention.