

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

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.

DR 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.

1. If, as a result of an inspection, an Inspector has reasonable grounds to determine ~~or anticipate~~ 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, ~~including Underwater Cultural Heritage or is otherwise in breach of the terms of its exploitation contract,~~ the Inspector shall give any instruction ~~of a temporary nature he or she considered~~ reasonably necessary to remedy the situation, in accordance with the Standards, including:

(d) A written instruction requiring a suspension in ~~mining some or all~~ activities for a specific period ~~[upon written authorization from the Council, as its representative].~~

3. Any instruction issued under paragraph 1 above shall be in force until the Contractor has executed the instruction ~~and fulfilled all requirements~~. Upon receiving information from the Contractor about steps taken to implement the instruction, the inspectorate ~~[Compliance Committee]~~ 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 ~~[Secretary-General and to the Contractor’s sponsoring State or States and to coastal States adjacent to the contract area]~~ ~~[Compliance Committee]~~ ~~[the Commission]~~ ~~[the Council]~~ that an instruction has been issued under paragraph 1, and where the issue remains unresolved, the ~~[Inspectorate]~~ ~~[Council]~~ ~~[Compliance Committee]~~ may thereafter exercise ~~its the~~ powers conferred upon ~~the [Secretary-General]~~ ~~[Inspectorate]~~ ~~it~~ under regulation

103. ~~[The Secretary-General shall exercise these powers to prevent imminent danger to the health or safety of any person or serious harm to the environment arising out of activities in the Area.]~~

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

Regarding para 1(d), in our view, if the Inspector is acting on behalf of Council, such a power to suspend operations may be validly bestowed on an Inspector, provided it is exercised only where relevant procedures and thresholds are met, and for a prescribed period until the Council can review the matter. Waiting for an authorization from the Council could take some time, at which point unpermitted/unacceptable damage to human life and/or the environment will have already been done.

For para 3, not commenting on the appropriate institutional mechanisms here pending further Council discussion, we agree with the deletion of the final sentence. 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). In addition, the drafting proposal here may have unintended consequences, as it seems to impose a limitation such that inspector powers can only be used where there is such imminent danger, which was not the intention.