

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

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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.

- **Red font** are proposed amendments by the Facilitator in this revised text.
- Our proposed amendments and our questions or comments regarding the facilitator’s remarks 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 reasonable grounds to determine ~~or anticipates~~ that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of ~~{Serious} H~~[h]arm to the Marine Environment, ~~{including Underwater Cultural Heritage {for a Contractor is otherwise in breach of the terms of its contract with the Authority}}~~ the Inspector shall give an instruction of a temporary nature considered reasonably necessary to remedy the situation, in accordance with any applicable Standards, including:

(a) A ~~[written]~~ instruction requiring a Contractor to undertake specific tests or monitoring and to furnish the Chief Inspector with the results or report of such tests or monitoring within a set period;

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

~~[(e) — A [written] instruction prohibiting the Contractor from continuing or undertaking activities [for a specified period].-~~

1.bis The instruction will have immediate effect.

2. An instruction may be issued either orally or in writing under paragraph 1 above which must be given to the person designated by the Contractor or, in his or her absence, the most senior employee available aboard the vessel ship or Installation to whom the instruction can be issued. If the instruction is issued orally, the Inspector must confirm it in writing and give it to the person concerned at the earliest opportunity

2. bis. ~~The Inspector shall notify the Chief Inspector immediately when an instruction has been issued under paragraph 1.~~ The Chief Inspector shall ~~[then]~~ report immediately ~~[and provide a copy of the instruction]~~ to the Compliance Committee, the Secretary-General and through the Secretary-General to the Contractor's sponsoring State or States and, if applicable to the relevant ~~[adjacent]~~ coastal State or States, that an instruction has been issued under paragraph 1.

~~2. ter. An instruction shall be for a specified period not exceeding seven days. The Chief Inspector may extend such period by an additional seven days and shall report any such extension to the Compliance Committee.~~

2. ter. An instruction shall specify the information to be provided to the Inspector by the Contractor to demonstrate the steps being taken to implement the instruction within the specified period.

2. quater.sexies. The Compliance Committee may:

(a) Request the ~~[Chief]~~ Chief Inspector to provide further information as to the facts and circumstances giving rise to the issue of an instruction under paragraph 1 for its consideration; or

(b) revise or set aside an instruction under paragraph 1 as soon as practicable; or

(c) Invite the Council's attention to any cases of non-compliance with the terms of a contract.

3. An instruction shall be for a specified period not exceeding seven days. The Chief Inspector may extend such period ~~[by an additional seven days]~~ [until such time the Contractor has complied with the instruction and fulfilled all requirements], and shall report any such extension to the Compliance Committee.

3.bis An instruction is effective from the time fixed by the Inspector and remains in force unless set aside by the Compliance Committee or until it can be independently verified that the Inspector's instructions have been complied with within the specified period or the instruction lapses at the end of the specified period.

3.ter Within three days of the expiry of the specified period or any extension thereto under paragraph 3, the Chief-Inspector shall assess whether the issue giving rise to the instruction has been satisfactorily resolved ~~instruction has been complied with by the Contractor~~ and shall report immediately to the Compliance Committee. Subject to paragraph 3-bis, where a Contractor has failed to comply with a written instruction or the circumstances giving rise to the instruction remain unresolved, the Compliance Committee may thereafter exercise the powers conferred upon it under regulation 103.

3.quater In the case of a written instruction issued under paragraph 1(d), where the circumstances giving rise to a suspension in some or all Exploitation activities are not resolved or are unlikely to be resolved, the Compliance Committee shall ~~[following consultation with the Contractor]~~, notify the Council immediately together with any recommendation as to whether such suspension should continue. ~~[Following consultations with the Contractor]~~, ~~t~~The Council shall decide if the suspension should continue, including the placing of conditions on any recommencement of activities, taking into account any recommendations of the ~~[Commission]~~ [Committee].

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

Regarding (1), we strongly agree with the suggestion to delete “serious”. Serious harm is an extreme and prohibited level of harm. An inspector should not have to wait for that extreme degree of unlawful harm to be reached before they can act. They should be able to act preemptively, and with the aim to ensure maximum protection of the marine environment.

As a general comment on the subparas of para 1, we are not sure that these procedural requirements are sufficiently covered in the Regulations. We would suggest they are supplemented either in the Regulations or by Standards, to ensure due process and fair treatment for Contractors, as suspension of mining is quite an intrusive power to be given to an individual staff member. Hence relevant checks and balances should be incorporated into the regime.

In para 2, we have some proposed amendments to retain previous language which provided for orally given instructions to be followed up with written copies.

In para 3, we recommend deletion of the time frame in line 2. The Chief Inspector should have the power to extend the time for such a time as needed rather than setting seemingly arbitrary deadlines which may be difficult for the Compliance Committee to meet and result in an inappropriate lapse in the instruction.

In 3bis we suggest adding “it can be independently verified that” before “the inspectors instructions have been complied with”.

In 3ter we suggest focussing on the issue rather than the instruction itself so would replace “instruction has been complied with”, with “issue giving rise to the instruction has been satisfactorily resolved”.