

**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:

Informal Working Group – Inspection, Compliance and Enforcement

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

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd.

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

Draft Reg. 99(1)

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 ~~for 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]~~ Serious Harm to the Marine Environment, ~~[including Underwater Cultural Heritage [or to, human remains and objects and sites of an archaeological or historical nature~~ or a Contractor is otherwise in breach of the terms of its contract with the Authority] the Inspector shall give ~~an~~ a written instruction of a temporary nature considered reasonably necessary to remedy the situation, in accordance with any applicable Standards, including: [...]

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

- We consider that Draft Regulation 99(1) should use the standard of “Serious Harm” not the undefined concept of “harm”. It is important that the Draft Regulations take a considered and consistent approach to references to impact upon the marine environment. We consider that the concept of “Serious Harm” is a key concept for setting an appropriate level of materiality for triggering specific regulatory responses, such as that envisaged here.
- We know that exploitation activities will have an impact upon the environment and that this is unavoidable. As such, when considering what actions should give rise to regulatory action, we need to ensure a specific and clear standard is employed – namely the standard of Serious Harm.
- We also consider that it is clearer to refer to specific, physical objects in this paragraph rather than just Underwater Cultural Heritage (particularly if cultural

heritage will not be included in the definition of Marine Environment). We have proposed drafting consistent with that in Draft Regulations 35 and 28(3).

- We also consider that consistent with industry standard practice, all instructions should be in writing and there should not be the option for these to be given orally.
- We also support the proposed deletion of “or anticipates” from this paragraph.

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Draft Reg. 99(2)

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.

2. An instruction under paragraph 1 above must be given [in writing](#) 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.

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

- We consider that consistent with industry standard practice, all instructions should be in writing and there should not be the option for these to be given orally under Draft Regulation 99(2).
- Alternatively, if the option for oral instruction is retained, this should be followed by confirmatory instructions in writing at the earliest opportunity.
- We also support the change from “vessel” to “ship” for consistency.

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Draft Reg. 99(3)

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3. An instruction shall be for a specified period not exceeding seven days. Where still necessary to remedy the situation identified in paragraph 1, tThe 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.

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

- We propose amendments to Draft Regulation 99(3) to clarify that the Chief Inspector may only grant extensions for instructions given under Draft Regulation 99 where the instructions are still necessary to remedy the situation identified in paragraph 1. We consider that extension period of seven days would be appropriate.
- We consider that there is no need for an open-ended ability to extend any instructions as this would be inconsistent with their temporary nature under Draft Regulation 99, which requires them to be aimed at avoiding Serious Harm.

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Draft Reg. 99(3.bis)

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~~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 the Inspector's instructions have been complied with within the specified period or the instruction lapses at the end of the specified period.~~

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

- We consider Draft Regulation 99(3.bis) is inconsistent with Draft Regulation 99(3) and so should be deleted or the two paragraphs harmonized.

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

Draft Reg. 99(3.quarter)

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3.quarter 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}~~ Contractor, notify the Council immediately together with any recommendation as to whether such suspension should continue. ~~{Following consultations with the Contractor}, tT~~ The Council shall decide if the suspension should continue, including the placing of conditions on any recommencement of exploitation activities, taking into account any recommendations of the ~~{Commission, }{or the Compliance Committee}~~.

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

- We have proposed amendments to clarify the drafting Draft Regulation 99(3.quarter) and the role of the Compliance Committee.

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Draft Reg. 99(3.ter)

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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 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.~~

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

- We propose deleting the last sentence of Draft Regulation 99(3ter) as it is not necessary or appropriate. Draft Regulation 103 already applies in all cases of breach or non-compliance and there is no need for it to apply merely because the circumstances giving rise to the instructions are ‘unresolved’.
- The “circumstances giving rise to the instruction” may remain unresolved due to no fault of the Contractor. In such circumstances it would not be fair nor appropriate for the Authority to then make use of its powers under Draft Regulation 103.