

THE PEW CHARITABLE TRUST'S COMMENTARY

***ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON
EXPLOITATION OF MINERAL RESOURCES IN THE AREA,
DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)***

Key

Black font, red font, and grey text-boxes are replicated from the Draft Regulations text.

Blue font represents commentary or edits proposed by The Pew Charitable Trusts.

Regulation 99

Inspectors' power to issue instructions

[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]~~[harmful effects] to the Marine Environment [or to human remains and objects and sites of an archaeological or historical nature], the Inspector shall give a written instruction, which will have immediate effect, 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; and

(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.

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 ship or Installation to whom the instruction can be issued. An Inspector may issue an instruction orally under paragraph 1 in urgent situations where the issue of a written instruction is impracticable. Where an instruction is issued orally, the Inspector must confirm it in writing and give it to the designated person at the earliest opportunity.

2. bis The Inspector shall 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 and flag State, that an instruction has been issued under paragraph 1 above.

2. ter [Unless otherwise stated, an instruction issued pursuant to this regulation shall have immediate effect and] ~~[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.

3. An instruction issued shall be for a specified period not exceeding 7 Days. Where still necessary to remedy the situation identified in paragraph 1, the Chief Inspector may extend such period by an additional 7 Days and shall report any such extension to the Compliance Committee.

3.bis Within 3 Days of the expiry of the specified period or any extension thereto under paragraph 3, the Chief-Inspector shall assess whether the issue given rise to the instruction has been satisfactorily resolved and shall report immediately to the Compliance Committee.

3. ter The Compliance Committee may:

(a) Request the [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;

(b) ~~[where identifying a material flaw in substance or procedure,]~~ revise or set aside an instruction issued under paragraph 1 above as soon as practicable, ~~[stating the reasons];~~

(b) bis Exercise the powers conferred upon it under paragraph 1 of Regulation 103, including where a Contractor has failed to comply with a written instruction; or

(c) Invite the Council's attention to any cases of non-compliance with the terms of an Exploitation Cecontract.

3. quat In the case of a written instruction ~~[issued under subparagraph 1(d)],~~ where the circumstances giving rise to a suspension 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. T~~he 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 Compliance Committee.~~

4. Nothing in this Regulation shall preclude the Council from issuing emergency orders pursuant to Article 162, subparagraph 2(w) of the Convention.]

Paragraph (1) sets the trigger of this Inspector power as risk of harm to humans or the environment. We are not sure why other areas would be excluded. Contractors should comply with all their obligations and we consider the **grounds for use of this Inspector power should be a threat of any non-compliance** with the Regulations, Standards or Contract. (If the narrower scope of paragraph (1) is retained, we note that the language of “*objects and sites of an archaeological or historical nature*” will need reconsideration based on outcomes of the Underwater Cultural Heritage Working Group.)

Instead of adding “*written*” in paragraphs (1)(a), (b), and (c), we suggest relying upon paragraph (2), which covers the point well. Currently paragraphs (1) and (2) directly conflict with each other, leaving any oral instruction from an Inspector under this regulation open to dispute on procedural grounds.

We note that an Inspector's power to issue an instruction requiring **temporary suspension of activities** (formerly paragraph (1)(d)) was deleted from this Regulation in the February 2024 Consolidated text. As previously noted by Spain, the United Kingdom, and the Federated Staes of Micronesia in the July 2024 Council session, paragraph (3 quat) needs consequential amendment to reflect that deletion. We suggest “*In the event that an instruction issued under regulation 99 may require a suspension of Commercial Production, regulations 29 and 29 bis shall apply*”.