

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:

COUNCIL - PART 3

Informal Working Group - Inspection, Compliance and Enforcement

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete.

1. Name(s) of Delegation(s) making the proposal: Republic of Costa Rica

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

Regulation 99, ISBA/27/C/IWG/ICE/CRP.1/Rev.2

3. 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.

Regulation 99

Inspectors’ power to issue instructions

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, 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:

(a) ~~[A written instruction requiring a suspension in mining activities for a specified period, or until such time and date as the Authority and Contractor agree;] [A requirement to undertake specific tests or monitoring and to furnish the Authority with the results or report of such tests or monitoring within a set period]; –~~

(b) A written instruction placing conditions on the continuation of mining activities [including 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 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 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 issue. The Inspector 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 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 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 its the powers conferred upon the [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].~~

3. **Please indicate the rationale for the proposal. [150 word limit]**

- For paragraph 1 is agreed with 'shall', rather than 'may'. A mandatory enforcement power brings greater clarity, predictability and equity to an inspectorate programme, compared to reliance upon solely discretionary powers. The Standards should set out in more detail the threshold for use of Inspectors' powers, and situations in which inspectors can act immediately versus requiring further authority or decisions from another ISA organ.]
- In subparagraph "d" the deletion of 'mining' before 'activities' is 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.
- In paragraph 3, the final sentence of 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 was not the intention.