

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> 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](mailto:council@isa.org.jm).*

**1. Name of Working Group:**

Informal Working Group on 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 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 ~~or a Contractor is otherwise in breach of the terms of its contract with the Authority~~ the Inspector shall give any instruction of a temporary nature considered reasonably necessary to remedy the situation, in accordance with ~~[the]~~ any applicable Standards, including:...

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

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 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.]~~~~[The Inspectorate 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.]~~

2. bis. The Inspector shall notify the Chief Inspector immediately when an instruction has been issued under paragraph 1. The Chief Inspector shall report immediately 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 coastal State or States, that an instruction has been issued under paragraph 1....

2. sexies. 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; or

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

(c) confirm the instruction, and if appropriate issue a compliance notice pursuant to regulation 103 and invite the Council's attention to any cases of non-compliance with the terms of a contract.

[3. Subject to paragraph 2ter, Any instruction issued under paragraph 1 above shall be in force until the Contractor has ~~executed~~ complied with the instruction and fulfilled all requirements. Upon receiving information from the Contractor about steps taken to implement the instruction, ~~the inspectorate~~ Chief Inspector [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~~ Chief Inspector 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] the steps taken by the Contractor to implement the instruction~~that an instruction has been issued under paragraph 1~~, and where the issue remains unresolved, the [Inspectorate] [Council] [Compliance Committee] may thereafter exercise its powers conferred upon it under regulation 103.]

~~[3.Alt. An instruction issued under paragraph 1 must either be confirmed, revised or set aside by the Inspector General as soon as practicable.]~~

~~[3.Alt.bis An instruction shall be for a specified period not exceeding seven days. The Inspector General may extend such period by an additional seven days.]~~

~~[3.Alt.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 time.]~~

~~[3.[Alt. quater] septies An instruction is effective from the time fixed by the Inspector and remains in force [until] unless set aside by the [Inspector-General] 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.]~~

~~[3.Alt.sexies The Inspector General shall report immediately to the Secretary General, the Commission, the Council and to the Contractor's sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State that an instruction has been issued under paragraph 1. The Council may request further information as to the facts and circumstances giving rise to the issue of an instruction under paragraph 1 for its consideration.]~~

~~[3.[Alt.septies] octies. Within three days of the expiry of the specified period or any extension thereto under paragraph [3bis] 2 the [Inspector-General] Chief Inspector shall [determine] assess whether the instruction has been complied with by the Contractor and shall report immediately to the Compliance Committee. Subject to paragraph 3 [octies] nonies, where a Contractor has failed to comply with a written instruction or the circumstances giving rise to the instruction remain unresolved, the~~

~~Inspector-General Compliance Committee [shall] may thereafter exercise the powers conferred upon [the Inspector-General] it under regulation 103.~~

~~3.[Alt. octies] nonies In the case of a written instruction issued under paragraph 1(d), where the circumstances giving rise to a suspension in some or all [mining] activities are not resolved or are unlikely to be resolved, the [Inspector-General] Compliance Committee shall notify the Council immediately together with any recommendation as to whether such suspension should continue. 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.~~

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

In paragraph 1, we suggest deleting “serious” harm as a condition. 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 pre-emptively, and with the aim to ensure maximum protection of the marine environment.

Regarding para 1(d), we are supportive of the deletion of the wording that requires written authorization from the Council. 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. In our view, if the Inspector is acting on behalf of Council, such a power to suspend operations should be validly bestowed on an Inspector. However, this power must only be exercised where relevant procedures and thresholds are met, and for a prescribed period until the Council can review the matter. We are not sure these procedural requirements are sufficiently covered in the Regulations, and 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.

On para 3, we are not sure if the wording ‘person designated by the Contractor’ is clear. Does this mean designated representative (which is a defined term)? Or is it a person designated as the primary point of contact for each inspection? If its the latter, then there should be a regulation that requires that designation, and then this paragraph of DR99 can cross-refer to that new regulation.

Regarding paragraph 2 sexes, we believe there should be another option in this list for the Compliance Committee to confirm the instruction given by the Inspector (and to formalise it or to build upon it in the form of a compliance notice). This would help to clarify the relation between DR99 inspector instruction and DR103 compliance notice.

We also consider (c) should be amended to a duty to report the matter to the Council. The current wording seems incongruous and an Inspector Notice does not necessarily pertain to non-compliance, it may be a pre-emptive measure. In addition, if an Inspector's instruction requires suspension, we believe this would need to go to the Council for consideration. In our view, suspension of activities or contract is not a matter that can solely be decided by a sub-committee of the LTC. This needs to be a decision of Council.

We prefer paragraph 3 over paragraph 3 Alt with some amendments and also support the retention of 3alt octies.

For paragraph 3, we suggest that the wording 'subject to paragraph 2 ter' is added to the beginning of paragraph 3, to indicate that the duration of the instruction cannot be longer than the 7 or 14 days permitted by paragraph 2 ter. In addition, we note 2bis has already given the obligation that the CI notify the LTCC and Coastal States by way of the SG, so we recommend instead that this paragraph direct the CI to share with the LTCCC, SG and/or Council how the instructions has been complied with. Then, where the issue remains unresolved, the Compliance Committee can exercise its powers conferred under DR 103.

Lastly, we support the inclusion of paragraph 4.