

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:
COUNCIL - PART II**

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 and send to council2022@isa.org.jm.

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

Norway and the Netherlands

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

Part XI Compliance. This is a package proposal where we have suggested an Inspectorate as the appropriate mechanism for inspection and tried to implement this throughout Part XI.

3. Kindly provide the proposed amendments to the regulation 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 96
Inspections: general**

1. The Council ~~shall establish an Inspectorate, as the~~shall establish appropriate mechanisms for inspection, as provided for in article 153(5) and 162 (2) (z) of the Convention. Inspections performed shall be undertaken by Inspectors who meet the qualifications set out by the Council pursuant to Regulation 97(1).

2. The Contractor shall permit the Authority to send its Inspectors, who may be accompanied by a representative of its State or other party concerned, in accordance with article 165 (3) of the Convention, aboard vessels and Installations, whether offshore or onshore, used by the Contractor to carry out Exploitation activities under an exploitation contract, as well as to enter its offices wherever situated. To that end, Members of the Authority, in particular the sponsoring State or States, shall assist the Authority ~~Council, the Secretary General~~ and Inspectors in discharging their functions under the Rules of the Authority.

3. The ~~Secretary General~~Inspectorate shall give reasonable notice to the Contractor of the projected time and duration of inspections, the names of the Inspectors and any activities that the Inspectors are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor, save in situations where the ~~Secretary General~~Inspectorate has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the ~~Secretary General~~Inspectorate may, where practicable, exercise the right to conduct an inspection without prior notification.

4. Inspectors may inspect any relevant documents or items which are necessary to monitor the Contractor’s compliance under the exploitation contract and the Rules of the Authority, all other recorded data and samples and any vessel or Installation, including its log, personnel, equipment, records and facilities.

5. The Contractor and its agents and employees shall cooperate with the Inspectors and give full assistance to ~~the shall facilitate the actions of~~ the Inspectors in the performance of their duties, and shall:

(a) Accept and facilitate the prompt and safe boarding and disembarkation of vessels and Installations by Inspectors;

(b) Cooperate with and assist in the inspection of any vessel or Installation conducted pursuant to this regulation;

(c) Provide access to all relevant areas, items and personnel in offices or on vessels and Installations at all reasonable times;

(d) Provide access to monitoring equipment, books, documents, papers, records and passwords which are necessary and directly pertinent to verify the expenditures referred to in the Plan of Work or necessary to determine compliance with the financial payments due under the exploitation contract and these regulations;

(e) Answer fully and truthfully any questions put to them;

(f) Accept the deployment of remote real-time monitoring and surveillance equipment, where required by the ~~Secretary-General~~ Inspectorate, and facilitate the activities of Inspectors in deploying such equipment and having access thereto; and

(g) Not obstruct, intimidate or interfere with Inspectors in the performance of their duties.

6. Inspectors shall:

(a) Carry out inspections in accordance with internationally accepted principles of good seamanship so as to avoid risks to the safety of life at sea, and where appropriate follow ~~all~~ reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor, the captain of the vessel or other relevant safety officers aboard vessels and Installations; and

(b) ~~To the maximum extent possible, refrain vfrom any undue interference~~ Not unduly interfere with the safe and normal operations of the Contractor and of vessels and Installations, unless the Inspector has reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.

Regulation 97

Inspectors: general

1. The Council, based on the recommendations of the Commission, shall determine the relevant qualifications and experience appropriate to the areas of duty of an Inspector under this Part.

2. The Commission shall make recommendations to the Council on the appointment, supervision and direction of Inspectors, and on an inspection programme and schedule, ~~under the inspection mechanism~~ for the Inspectorate established by the Council in regulation 96 (1).

3. The ~~Secretary-General~~ Inspectorate shall manage and administer such inspection programme, including the terms and conditions of the appointment of Inspectors, at the direction of the Council.

Regulation 98

Inspectors' powers

1. An Inspector may, for the purposes of monitoring or enforcing compliance with the Rules of the Authority and the terms of the exploitation contract:

(a) Question any person engaged by the Contractor in the conduct of Exploitation activities on any matter to which the Rules of the Authority relate;

(b) Require any person who has control over, or custody of, any relevant document, whether in electronic form or in hard copy, including a plan, book or record, to produce that document to the Inspector immediately or at any other time and place that the Inspector requires;

(c) Require from any person referred to in subparagraph (b) above an explanation of any entry or non-entry in any document over which that person has custody or control;

(d) Examine any document produced under subparagraph (b) and make a copy of it or take an extract from it;

(e) Inspect or test any machinery or equipment under the supervision of the Contractor or its agents or employees that, in the Inspector's opinion, is being or is intended to be used for the purposes of the Exploitation activities, ~~unless such inspection or testing will unreasonably interfere with the Contractor's operations;~~

(f) Seize any document, article, substance or any part or sample of such for examination or analysis that the Inspector may reasonably require;

(g) Remove any representative samples or copies of assays of such samples from any vessel or equipment used for or in connection with the Exploitation activities;

(h) Require the Contractor to carry out such procedures in respect of any equipment used for or in connection with the Exploitation activities as may be deemed necessary by the Inspector, ~~unless such procedures will unreasonably interfere with the Contractor's operations; and~~

(i) Upon written authorization from the Council, perform any other prescribed function of the Authority as its representative.

2. An Inspector may instruct any Contractor, its employees or any other person who performs an activity in connection with an exploitation contract to appear before the Inspector to be questioned on any matter to which the Rules of the Authority relate.

3. Before an Inspector may seize any document under paragraph 1 (f) above, the Contractor may copy it.

4. When an Inspector seizes or removes any item under this regulation, the Inspector shall issue a receipt for that item to the Contractor.

5. An Inspector may document any site visit or inspection activity using any reasonable means including video, audio, photograph or other form of recording.

6. An Inspector shall be bound by strict confidentiality provisions and must have no conflicts of interest in respect of duties undertaken, and shall conduct his or her duties in accordance with the Authority's code of conduct for Inspectors and inspections approved by the Council.

Regulation 99

Inspectors' power to issue instructions

1. If, as a result of an inspection, an Inspector has evidence 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 may give any instruction he or she considers reasonably necessary to remedy the situation, including:

(a) 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.

~~(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;~~

(b) A written instruction placing conditions on the continuation of mining activities 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~~stipulation in writing 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.~~

(d) 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 issued.

3. Any instruction issued under paragraph 1 above shall be in force until the Contractor has executed the instruction, or for a specified period, not exceeding ~~seven X~~ Days, after which it lapses. [Upon receiving information from the Contractor about steps taken to implement the instruction, the Inspectorate shall decide, as soon as possible and within no more than three days, whether the instruction has been complied with by the Contractor.] The Inspectorate shall report immediately to the Secretary-General, the Council, and to the Contractor's sponsoring State or States that an instruction has been issued under paragraph 1, and the ~~Secretary-General~~Inspectorate may thereafter exercise the powers conferred upon the ~~Secretary-General~~Inspectorate under regulation 103.

Regulation 100

~~Inspectors to report~~Reports

1. At the end of an inspection, the Inspector shall prepare a report, setting out, inter alia, his or her general findings and any recommendations for improvements in procedures or practices by the Contractor. The Inspectorate shall send the report to the Secretary-General, the Commission, and the Council, and the Secretary-General shall send a copy of the report to the Contractor and to the sponsoring State or States and, if appropriate, the relevant coastal State or States and the flag State.

2. The ~~Secretary-General~~Inspectorate shall report annually to the Council on the findings and recommendations following the inspections conducted in the prior Calendar Year, and shall make any recommendations

to the Council on any regulatory action to be taken by the Council under these regulations and an exploitation contract.

3. The ~~Secretary-General~~[Inspectorate](#) shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector by any person or the failure by a Contractor to comply with regulation 96 to the ~~Secretary-General, the~~ [sponsoring State or States](#) and the flag State of any vessel or Installation concerned for consideration of the institution of proceedings under national law.

Regulation 101 Complaints

1. A person aggrieved by an action of an Inspector under this Part may complain in writing to the ~~Secretary-General~~[Inspectorate](#), who shall consider the complaint as soon as practicable.

2. The ~~Secretary-General~~[Inspectorate](#) may take such reasonable action as is necessary in response to the complaint.

[3. The Inspectorate shall issue a report to the Authority describing the complaint and the action taken in response to such a complaint.](#)

Section 2 Remote monitoring

Regulation 102 Electronic monitoring system

~~1. A Contractor shall restrict its mining operations to the Mining Area.~~

2. All mining vessels and mining collectors shall be fitted with an electronic monitoring system. Such system shall record, inter alia, the date, time and position of all mining activities. The detail and frequency of reporting shall be in accordance with the Guidelines.

3. The ~~Secretary-General~~[Inspectorate](#) shall issue a compliance notice under regulation 103, where ~~he or she~~[it](#) determines from the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.

4. All data transmitted to the Authority [and the Inspectorate](#) under this regulation shall be transmitted to the sponsoring State or States.

Section 3 Enforcement and penalties

Regulation 103 Compliance notice, [suspension](#) and termination of exploitation contract

1. At any time, if it appears to the ~~Secretary-General~~[Inspectorate](#) on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the ~~Secretary-General~~[Inspectorate](#) shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.

2. A compliance notice shall:

- (a) Describe the alleged breach and the factual basis for it; and

(b) Require the Contractor to take remedial action or other such steps as the ~~Secretary-General~~[Inspectorate](#) considers appropriate to ensure compliance within a specified time period.

2.bis Actions specified in the compliance notice should be commensurate with the gravity, frequency or other circumstances of the alleged breach.

3. For the purposes of article 18 of annex III to the Convention, a compliance notice issued under this regulation constitutes a warning by the Authority.

4. The Contractor shall be given a reasonable opportunity to make representations in writing to the ~~Secretary-General~~[Inspectorate](#) concerning any aspect of the compliance notice. Having considered the representations, the ~~Secretary-General~~[Inspectorate](#) may confirm, modify or withdraw the compliance notice.

5. If a Contractor, in spite of one or more warnings by the ~~Authority~~[Inspectorate](#), fails to implement the measures set out in a compliance notice and continues its activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the contract, Part XI of the Convention and the rules, regulations and procedures of the Authority, the Council may suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract.

6. In the case of any violation of an exploitation contract, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation.

7. Save for emergency orders under article 162 (2) (w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

Regulation 104

Power to take remedial action

1. Where a Contractor fails to take action required under regulation 103, the Authority may carry out any remedial works or take such measures as it considers reasonably necessary to prevent or Mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an exploitation contract.

2. If the Authority takes remedial action or measures under paragraph 1 above, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor.

Regulation 105

Sponsoring States

Without prejudice to regulations 6 and 21, and to the generality of their obligations under articles 139 (2) and 153 (4) of the Convention and article 4 (4) of annex III to the Convention, States sponsoring Contractors shall, in particular, take all necessary and appropriate measures to secure effective compliance by Contractors whom they have sponsored in accordance with Part XI of the Convention, the Agreement, the rules, regulations and

procedures of the Authority and the terms and conditions of the exploitation contract.

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

Re DR 96, 97 and 98: The Inspectorate should manage the activities of the Inspectors.

Re DR 99: We think it makes sense to list the instructions in DR 99 (1) litra a-d according to the gravity of the instruction. We also suggest removing in (a) *“or until such time and date that the Authority and Contractor agrees”* and change DR 99 (3) so that it reads *“any instruction issued under paragraph 1 above shall be in force until it has been complied with by the Contractor or for a specified period, not exceeding X Days, after which it lapses”*. A suspension of activities is a serious measure and should be decided by the Inspector alone, including the durability of its application which should not be longer than absolutely necessary. We consider 7 days as outlined in DR 99 (3) too short a time period and look forward to identifying a suitable time period based on discussions with colleagues. A more realistic time period should be set considering the difference in the seriousness of the underlying offenses. Any instruction should only lapse after the Contractor has properly complied with the instruction, which should be decided by the Inspector. To ensure this does not take longer than absolutely necessary, Inspectors should determine as soon as possible and within three days after they received the Contractors’ follow up, whether the instruction has been complied with. This way, the Contractor ‘determines’ how long the instruction will be in force.

Re DR 100: DR 100 should be renamed “Reports” because it does not solely regulate reports from Inspectors. Suggestion to replace the Secretary-General with the Inspectorate if this is established. The Inspectorate should however also send copies of its reports to the Secretary-General, and to the Commission and Council.

Re DR 101: Complaints should be made to the Inspectorate in the first instance. In some way, and if the complaining party is not satisfied by the Inspectorate’s handling of the complaint, such complaints should be reviewed by the Council.

Re DR 102: DR 102 (1) is unnecessary. It will follow from the exploitation contract that a Contractor shall restrict its mining operations to the mining area. It also does not pertain to the “electronic monitoring system” required by DR 102.

Re DR 103: If an Inspectorate is established, the Inspectorate should have the competence to issue compliance notices. DR 103 (2)bis: As with the instructions, the actions required in a compliance notice should also follow a progression.