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Draft regulations on exploitation of mineral resources in the Area

Draft regulations on exploitation of mineral resources in the Area

Parts XI: 96 to 105

Drafting proposals submitted by delegations as compiled on 28 March 2022

Part XI

Inspection, compliance and enforcement

Section 1 Inspections

Regulation 96 Inspections: general

1. The Council shall establish appropriate mechanisms for inspection, as provided for in article 162 (2) (z) of the Convention.
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 Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.
3. The Secretary-General 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 has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General 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, 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 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, 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) 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 from any undue interference 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.

I - Members of the International Seabed Authority

Chile

2. The Contractor shall permit the Authority to send its Inspectors, who ~~shall~~~~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 Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

Rationale

Sugerimos cambiar el verbo “may” a “shall” para garantizar que puedan ir representantes de otros Estados Parte y garantizar la transparencia.

China

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~~.

3. The Secretary-General 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 has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary-General 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, all other recorded data and samples and ~~any~~ vessels or

Installations used in the Area in connection with activities in the Area, including its log, personnel, equipment, records and facilities.

5. The Contractor and its agents and employees shall facilitate the actions of the Inspectors in the performance of their duties, and shall:

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

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

6. Inspectors shall:

(b) ~~To the maximum extent possible, R~~refrain from any undue interference with the safe and normal operations of the Contractor and of vessels and Installations, ~~unless if~~ the Inspector has reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract, ~~the Inspector shall report to the Authority immediately.~~

Rationale

Paragraph 2, which allows inspectors to be sent “aboard vessels and installations, whether offshore or onshore” and “offices wherever situated clearly goes beyond the provisions of the Convention. The scope of inspector 's inspection shall be confined to vessels or installations in the Area used in connection with activities in the Area.

On paragraph 3, according to the Convention, it is the Council, not the Secretary-General, that serves as the organ that exercises the power of inspection. The provision of this paragraph not only expands the authority of the Secretary-General, but also deprive sponsoring States of the opportunity to participate in inspection. It is suggested to further clarify “the matter to be so urgent that notice cannot be given”. Otherwise, the above-mentioned content should be deleted.

Paragraph 4 provides that inspectors may inspect “any vessel or installation”, which exceeds the authorization under the Convention. The scope of inspector 's inspection shall be confined to vessels or installations in the Area used in connection with activities in the Area.

In Paragraph 5 (c), the content “access in offices” goes beyond the provisions of the Convention and is proposed to be deleted. On Paragraph 5 (f), in accordance with the Convention, relevant requirement shall be made by the Council rather than the Secretary-General, and it should be amended accordingly.

In Paragraph 6 (b), the exception clause “unless the Inspector has reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract” unduly expands the powers of the inspectors, who might thereby improperly interfere with the legal operations of the Contractor. If the inspectors do “have reasonable grounds for believing that the Contractor's work violates his obligations under the mining

contract”, they should report to the Authority immediately rather than take actions without authorization.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

**Note: Council amendments are in Red and Pew comments are in Blue.

1. The Council shall establish appropriate mechanisms for ~~inspection~~ **directing and supervising a staff of Inspectors**, as provided for in articles 153(5) and 162(2)(z) of the Convention, before the effective date of any exploitation contract, which shall accord with the principles of:

- (a) independence,
- (b) transparency,
- (c) fairness,
- (d) proportionality,
- (e) accountability,
- (f) precaution;

and shall ensure inclusivity, gender equality, and the effective protection of the health and safety of inspectors.

1.bis The Council shall approve and maintain a code of conduct for Inspectors and inspections, that takes into account the principles in paragraph (1) and includes provisions on identifying and managing conflicts of interest, and on information management and confidentiality.

2. The Contractor shall permit the Authority to send its Inspectors, who may be accompanied by a representative of ~~its~~ **the Contractor’s sponsoring** State or other party concerned, **in particular affected coastal States** [, in accordance with **article 142 and** 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~~ any State or States in whose national jurisdiction or on whose vessel the Authority wishes to conduct inspection activities, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority.

2. bis. Nothing in these regulations shall be construed in any way inconsistently with the exclusive jurisdiction of the flag State over its vessels on the high seas as reflected in article 92 of the Convention; nor the enforcement rights of port States as reflected in article 218 of the Convention.

3.

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- (a) Except where the circumstances described in paragraph (b) apply, ~~t~~The Secretary-General [Inspector] 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.
- (b) ~~[, save]~~The circumstances in which ~~[in situations [where the Secretary General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the Secretary General may, where [practicable] [deemed necessary]~~**The Authority, sponsoring States and flag States shall cooperate towards the avoidance of unnecessary duplication of administrative procedures and compliance requirements;**~~y];~~ exercise the right to conduct]an inspection may be conducted without prior notification are where:~~[] [where the Secretary General may without prior notification direct an inspection of the Contractor's activities in accordance with regulation 4(5)]~~
- (i) a compliance notice under regulation 103 has been issued to the Contractor in question;
 - (ii) (ii) an organ of the Authority determines for good cause that harm or threat of harm to the Marine Environment or human health and safety is likely to occur or has occurred; or
 - (iii) (ii) regulation 4(3 quater.) or 4(5) applies;

3bis. Taking into account regulation 3(b), the Authority may place Inspectors on Contractors' vessels for such periods as may be deemed necessary or expedient, including for long-term residential placements.

~~[4. Inspectors may inspect any relevant documents or items which are necessary to monitor the Contractor's compliance, all other recorded data and samples and [any vessel or Installation] [used in the Area in connection with activities in the Area], including its log, personnel, equipment, records and facilities.]~~

5. The Contractor and its agents and employees 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, including provision of a berth for overnight stays;
- (b) Cooperate with and assist in the inspection of any vessel, or Installation or equipment 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] [Council]]~~, 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:

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- (a) 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 from any undue interference 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.]~~

~~(b bis). An Inspector shall adhere to [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] established pursuant to DR96(1)bis.~~

Rationale

Regarding paragraph 1, the red insertion (proposed by Australia and Russia) more exactly reflects UNCLOS and ensures that inspector supervision is not overlooked. Further, Article 153(5) of UNCLOS should also be referenced, which gives the ISA the right to inspect all installations in the Area used in connection with activities in the Area.

We believe it would also make sense to use these Regulations to establish the Inspectorate oversight mechanism, rather than simply repeating the UNCLOS requirement to establish it in the future. Several consultation respondents commented upon the lack of detail in this Part of the draft Regulations, with disappointment.

The Regulations could advance this critical issue through these proposed edits, including a stipulation that the inspectorate be established before any exploitation commences, as well as the suggested guiding principles, and reference to the health and safety of inspectors, as suggested from Council discussions in March 2019 (interventions by Japan, France, Italy, Tonga, Germany, Belgium), and the July 2019 workshop held in Jamaica by Resolve and The Pew Charitable Trusts, on the ISA's future inspectorate (see here for: copy of workshop report).

Regarding paragraph 2, several member States (e.g. Japan, France, Italy, Tonga, Germany, Belgium) have noted the importance that the provisions of these regulations do not exceed the powers conferred upon the ISA by UNCLOS. Concern has been expressed as to whether inspection of premises under national jurisdiction may exceed the UNCLOS power for the ISA to 'inspect activities in the Area'. It will also be important not to clash with the flag State's exclusive jurisdiction over its vessels in the high seas. The ISA should, however, ensure to maintain maximum regulatory control, within its jurisdiction. Methods for doing so include retention of books and records requirements (DR39), and on-vessel monitoring mechanisms (e.g. DR96(3bis)).

Regarding the newly proposed paragraph 2bis, we believe it will be important not to interfere with the IMO regime and flag / port state controls. This insertion may assist with that point.

Regarding paragraph 3, the ISA should retain powers to inspect and audit Contractors at any time, to allow for risk-based targeting, see White Paper, Dr. Kevin Murphy (Pew, 2020). This should

include the possibility that ISA inspectors can conduct site visits or other inspection activities without giving prior notice to the Contractor in certain circumstances, though it is also important as a matter of public administrative law to set clear and stringent thresholds for when such an intrusive power can be exercised. This should be better delineated in the Regulations, as proposed in subparagraph (b).

Regarding the newly proposed paragraph 3bis, this is suggested to bolster the ISA's powers to inspect Contractors. It gives the ISA (discretionary) powers to place permanent on-vessel observers. Source: White Paper, Dr. Kevin Murphy (Pew, 2020), and see also report from the ISA Inspectorate workshop run by Pew / Resolve in July 2019. We note that a recent publication recommends the use of observers to fulfill the Contractor's ongoing monitoring requirements (similar to fishery observer programmes). Source: Mark Squillace. 2021. Best regulatory practice for deep seabed mining. Also, we believed DR3(b) should be cross-referenced because of its relevance to the inspectorate provisions. The ISA and sponsoring State may wish to collaborate on inspection activities and information, and not to duplicate each other's efforts in that regard. E.g. not running two separate but overlapping observer programmes.

Regarding paragraph 4, we recommend moving this provision to DR 98 as it seems more related to an inspector's powers.

Regarding paragraph 5, it might be clearer to have a separate provision on Contractor roles and responsibilities regarding inspections. Particularly as there may be some overlap between this DR95(5), with DR75(2) and DR3. Though this is not necessarily problematic provided the language remains consistent across each provision.

Regarding paragraph 6, It might be clearer to have a separate provision on Inspector duties and obligations (in addition to powers). Also, for subparagraph b, as previously drafted, this provision lacked enforceability. It was not clear where the 'confidentiality' provisions would be found; nor who would have responsibility for identifying conflicts, by what process, and how such conflicts will be managed. We have made some amendments and included those in subparagraph bbis.

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 established by the Council in regulation 96 (1).
3. The Secretary-General shall manage and administer such inspection programme, including the terms and conditions of the appointment of Inspectors, at the direction of the Council.

I - Members of the International Seabed Authority

Chile

The Council, ~~shall, based~~ on the basis of the recommendation of the Commission, ~~shall~~ determine the ~~relevant~~ qualifications, period of time in that function and experience relevant and appropriate to the fields areas of action duty of an Inspector under this Part.

Rationale

Chile sugiere agregar el tiempo de duración del cargo y criterios sobre un eventual conflicto de intereses que pueda inhabilitar al Inspector para ejercer su función.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

Regulation 97 Inspectors: ~~general~~ **Appointment and supervision**

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 [~~save in situations where the Secretary-General shall direct an inspection of the Contractor's activities in accordance with regulation 4(5). Based on the specified qualifications and experiences, a roster of candidates for Inspectors, including the members of the Commission as provided in article 165(3) of the Convention, shall be made by the Secretariat.~~]
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 established by the Council in regulation 96(1), **and in accordance with relevant Standards.**
3. [The Secretary-General] shall manage and administer such inspection programme, including the terms and conditions of the appointment of Inspectors **and a training programme to ensure quality and currency of Inspectors' expertise**, at the direction of the Council.

Rationale

Regarding paragraph 1 and 2, these provisions will depend upon the ISA's policy decisions about how the inspectorate will be constituted. A roster has been proposed (by Japan). There may be a need for periodic inspection teams working less frequently (e.g. reviewing monitoring reports, conducting on-board inspection visits), as well as a permanent staff of inspectors. Such staff may report to the Secretary-General or may report directly to the LTC or the Council. Monitoring of environmental impacts, might be a role not for inspectors, but for a scientific body with a different reporting line. See: Pew / Resolve 2019 Inspectorate Workshop report (copy here). Standards detailing requirements for inspector selection and management would also seem sensible, to assist the LTC, Council and Secretariat in the roles required of them by DR97.

Regarding paragraph 3, several participants at the July 2019 Pew / Resolve workshop about an ISA Inspectorate were concerned about the need to ensure the independence of the Inspectorate and to avoid conflicts of interest among inspectors, or political interference; and noted that UNCLOS describes the Secretariat as an administrative function, and does not confer any inspectorate duties or function upon the staff of the Secretariat. Hence there was not agreement between all parties that the Secretary-General should be responsible for the inspection programme. Another option proposed was for a standalone Inspectorate managed by its own Director-General, as a subsidiary organ accountable to the Council and supported by the Secretariat. (Copy of workshop report: [here](#))

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.

I - Members of the International Seabed Authority

China

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:

~~(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;~~

~~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.~~

Rationale

In accordance with Article 162 (2) (z) of the Convention, the function of an inspector is to determine whether the provisions of the Convention, the rules, regulations and procedures of the Authority and the terms and conditions of any contract with the Authority are being complied with by Contractors. The provisions of paragraph 1 (f) and (g), and paragraph 3 and 4 of this regulation, empower the inspectors such powers to seize documents and remove samples, which are clearly beyond the scope of authorization by Convention. It is suggested that the powers and responsibilities of the inspectors be further clarified and the relevant provisions authorizing “law enforcement powers” be deleted.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

**Note: Council amendments are in Red and Pew comments are in Blue.

1.(b bis) Inspect any relevant documents or items which are necessary to monitor the Contractor’s compliance, all other recorded data and samples and [any vessel or Installation] ~~used in the Area in connection with activities in the Area~~, including its log, personnel, equipment, records and facilities.

1(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]~~ ~~activities in the Area~~, ~~create a safety hazard and or endanger the environment;~~]

1(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;~~]

1(h) Require the Contractor to carry out such procedures in respect of any equipment or data 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]~~ ~~activities in the Area~~;] and

5. An Inspector shall may document any site visit or inspection activity, and may using any reasonable means to do so, 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]~~

Rationale

Regarding paragraph 1, one general comment: participants at the Pew / Resolve 2019 Inspectorate Workshop (copy of workshop report: [here](#)) considered that the Authority may also wish to deploy Inspectors for functions additional to the monitoring of compliance, for example:

- to monitor the overall state of the environment, or unforeseen environmental impacts on a regional-scale (e.g. cumulative impacts).
- to promote understanding of ISA's rules and to make recommendations for their improvement (e.g. identifying additional data needed for proper monitoring and enforcement).
- facilitating peer-to-peer learning between Contractors.
- providing advice to the ISA on the evolving interpretation of Best Environmental Practice and Good Industry Practice.

This could be covered by DR98(1)(i), or these wider functions could be added expressly to the Regulations about inspector duties and powers.

Some other drafting points for this paragraph:

subparagraph bbis - As mentioned in our DR 96 comments, we that paragraph would be more usefully relocated to this regulation

subparagraph e - We recommend striking the clause at the end as DR96(6) already provides that Inspectors must refrain from any undue interference with the operations of the Contractor.

subparagraph g - We recommend striking this sub-paragraph as it seems like a narrower sub-set of what is already covered by sub-paragraph (f).

subparagraph h - The list of inspector powers should authorize access to real-time monitoring data. Source: Fifth Report of the Code Project - Part 2 (Pew, 2019). Also, DR96(6) already provides that Inspectors must refrain from any undue interference with the operations of the Contractor.

Regarding paragraph 6, we propose relocating this to DR96(6) which concerns Inspector duties.

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 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 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.

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 for a specified period, not exceeding seven Days, after which it lapses. The Inspector shall report immediately to the Secretary-General and to the Contractor's sponsoring State or States that an instruction has been issued under paragraph 1, and the Secretary-General may thereafter exercise the powers conferred upon the Secretary-General under regulation 103.

I - Members of the International Seabed Authority

China

none

Rationale

Paragraph 1 gives inspectors the power to issue instructions in cases of "emergency" and "breach of the terms of exploitation contracts", including requiring a suspension in mining activities and the placing of conditions for the continuation of mining activities, which clearly exceed the authorization by the Convention. Such powers should be enjoyed by the Council. In accordance with the Convention and the Exploration Regulations adopted by the Authority, "in case of emergency", the Council shall issue an emergency order or the Secretary-General may take temporary measures "pending any action by the Council". Therefore, the inspector should report to the Authority immediately in case of emergency. Pending any action by the Council, the Secretary-General may take temporary measures as authorized by the Council, which should have a certain duration.

The provision of “or is otherwise in breach of the terms of its exploitation contract” in this paragraph is too broad and not “emergent” in nature. According to the Convention, the Authority may issue warnings to Contractors in case of breach of contract, and the inspectors are not in a position to issue instructions. It is suggested that relevant content be further clarified and revised.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

**Note: Council amendments are in Red and Pew comments are in Blue.

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~~]shall give any instruction he or she considers reasonably necessary to remedy the situation, in accordance with relevant Standards, including:

2.(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;

3. Any instruction issued under paragraph 1 above shall be in force for a specified period, not exceeding seven Days, after which it lapses. The Inspector shall report immediately to the Secretary-General and 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 Authority [~~Secretary-General~~]may thereafter exercise the powers conferred upon it [~~the Secretary-General~~] under regulation 103 and shall endeavor to do so before the Inspector’s instruction lapses.

Rationale

Regarding paragraph 1, The proposed change from ‘may’ to shall’ is consistent with a mandatory enforcement programme, which can bring greater clarity, predictability and equity to an inspectorate programme, compared to reliance upon solely discretionary powers. ‘When an inspector sees a violation, they should be obliged to issue a citation unless the violation is minor and can be corrected during the course of the inspection.’ Source: Mark Squillace. 2021. Best regulatory practice for deep seabed mining.

As mentioned previously, Standards and guidelines should be developed to flesh out what the threshold is for use of any ISA organ’s inspection or compliance powers. Rules should be clarified for when inspectors can act immediately versus requiring further authority or decision from another ISA organ. Source: Pew / Resolve 2019 Inspectorate Workshop report (copy: here).

Regarding paragraph 3, this provision seeks to find a balance between not affording any individual Inspector with excessive power, while also recognising that an Inspector would be

the person on the scene, and so needs to be appropriately empowered to act where there is urgency. A 7-day time period is therefore proposed, to enable the relevant organs of the ISA to review the Inspector's instruction.

General comment: Various member States (e.g. Japan, France, Italy, Tonga, Germany, Belgium) noted that the powers conferred upon Inspectors by these Regulations must not exceed the mandate provided by UNCLOS. Clarification was requested from the LTC as to whether a decision to suspend mining (albeit for a maximum duration of 7 days - see paragraph (2), below) could be taken by an Inspector acting with delegated authority. The clarification is yet to be provided, but may vary depending on whether the Inspector is acting on behalf of the Secretary-General, or on behalf of the Council. While the Council has powers to suspend contracts via emergency orders (UNCLOS Article 162(w)) or to suspend rights under contracts where there have been serious, wilful, persistent breaches of contract or failure to comply with a binding court judgement (Annex III), the Secretary-General does not have any such powers.

Regulation 100
Inspectors to report

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 Inspector shall send the report to the Secretary-General, 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 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 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 sponsoring State or States and the flag State of any vessel or Installation concerned for consideration of the institution of proceedings under national law.

I - Members of the International Seabed Authority

China

Regulation 100, paragraph 1 and 2

none

Rationale

Upon receipt of the inspection report, the Secretary-General shall notify the Contractor and its sponsoring State, as well as the flag State of the vessel under inspection, and shall give the relevant Contractors and States the opportunity to comment or make statements.

According to the Convention, upon the request of the Council, the Commission may also perform the function of inspection. In view of this, it is suggested that the Secretary-General should submit the inspection report, together with the comments or statements of the Contractor and its sponsoring State or flag State, to the Commission for further consideration, who should report the inspection result and make possible recommendations to the Council.

Fiji

1. What principal law is the basis of this inspector power and reporting?
2. What is the timing of this reporting which is not clear in this DR100?

Rationale

1. There should be a law that empowers this regulation.

2.The Council is 6 monthly and therefore takes time and hence will prolong the time that it takes for remediation or compliance to be undertaken for any breach.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

**Note: Council amendments are in Red and Pew comments are in Blue.

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

3. ~~[The Secretary-General shall report acts of violence, intimidation or abuse against or]~~ **In the event of the wilful obstruction or harassment of an Inspector by any person or the failure by a Contractor to comply with regulation 96, the Secretary-General shall**

- (a) **report such acts** to the sponsoring State or States and the flag State of any vessel or Installation concerned **and the State of nationality of any person, if known** for consideration of the institution of proceedings under national law; and
- (b) **report such acts to the Council and consider the exercise of powers under regulation 103.**

Regulation 100bis: Contractor compliance report

The Secretary-General shall prepare an annual compliance report for each Contractor, which shall be made available in draft form for comment to the Contractor and the Sponsoring State, before being reported to the Council and published on the Seabed Mining Register. The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.

Rationale

Regarding paragraph 1, inspectors should provide regular reports, which should be made available to all ISA organs and the public. A defined procedure or template for standardized reporting (and standardization of data) should be designed, to promote transparency and clarity. The Inspectorate could also help adapt the template for inspections with an emphasis on continuous learning. Source: Pew / Resolve 20919 Inspectorate Workshop report.

Regarding paragraph 3, the Regulations should reserve to the ISA the power to take regulatory action if its Inspectors are intimidated etc. by Contractors, rather than deferring exclusively to the relevant State.

Regarding the newly proposed regulation 100bis, we believe the ISA should maintain and publish compliance records for all Contractors. It would be a low-cost but highly effective means of incentivising compliance and promoting transparency and accountability.

Regulation 101 Complaints

1. A person aggrieved by an action of an Inspector under this Part may complain in writing to the Secretary-General, who shall consider the complaint as soon as practicable.
2. The Secretary-General may take such reasonable action as is necessary in response to the complaint.

I - Members of the International Seabed Authority

Fiji

1. What is practicable? If the possible timing could be reflected in this paragraph.
2. What is reasonable action? If these actions can be defined and the principal law that those will be based on.

Rationale

1. Timing is important as we look back on reporting is annual. We look at Council sessions it is 6 monthly. Would operations be ceased during all these times?
2. We feel there is so much power placed on the SG if this defined. There should be a defined boundary upon which he can take action on any breaches.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

**Note: Council amendments are in Red and Pew comments are in Blue.

Regulation 101 Complaints about Inspectors

1. A person aggrieved by an action of an Inspector under this Part may complain in writing to [the Secretary-General], who shall consider the complaint as soon as practicable.
2. [The Secretary-General] may take such reasonable action as is necessary in response to the complaint **and inform the Council accordingly.**

Rationale

Regarding paragraph 1 and 2, some delegations have suggested that this function should be performed by a Compliance committee, and not the Secretary-General. An ISA Ombudsperson would be another option.

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 shall issue a compliance notice under regulation 103, where he or she determines from the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.
4. All data transmitted to the Authority under this regulation shall be transmitted to the sponsoring State or States.

I - Members of the International Seabed Authority

Fiji

1. Procedure & monitoring should be ensured.
2. Will there be a body that keeps track and alerts SG on this or will wait for reporting schedule.
3. Timely intervention is very important and to maximize the use of EMS.

Rationale

1. Process is very important that should be based on transparency framework as mentioned by FSM.
2. As FSM, we agree that the current use of the monitoring process used in Pacific Fisheries should be considered as well as this will complement the EMS proposed.
3. Timely intervention is important in such EMS as that is one of the primary reasons. We concur with the other states on ensuring that intervention is timely and accurate. It would be no use for intervention or breaches to be reported on if the mining has already committed the breach in another area.

Netherlands

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

2bis the contractor shall use the best-available techniques to monitor in real-time and in the actual environment the mining impact, including the removal of mineral resources, plume dispersal, and sound, allowing for adaptive management during the mining operation.

Rationale

Electronic monitoring systems that operate in situ and in real time is current state of the art in technology development and will allow for: (1) effective and transparent inspection, as data could be viewed by anyone at any time, allowing also for a level playing field amongst contractors; and (2) adaptive management and improvement of operations. It allows for example for measuring of the actual plume and sound and could be used to react in case previously set thresholds are exaggerated, allowing a contractor to stay within the prior agreed environmental goals and objectives.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

Note: Council amendments are in **Red and Pew comments are in **Blue**.

Regulation 102 **Vessel notification and Electronic monitoring system**

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

1. Contractors shall notify the Authority before embarkation of any vessel or installation to be engaged in activities under the exploitation contract, and such notification shall include a detailed description of where it will be operating and its planned activities.

2. All ~~[mining]~~ vessels, **Installations** and mining collectors **involved in activities under the Exploitation contract activities** 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 **Standards, taking account of Guidelines**.

2bis. All vessels and installations used for activities under the exploitation contract shall be fitted with an accredited Satellite Automatic Identification System which shall operate at all times and provide information to identify each vessel and determine its position, navigation status, course and speed.

3. The Secretary-General shall **notify the sponsoring State and shall** issue a compliance notice under regulation 103, where ~~[he or she determines from]~~ **there is reasonable evidence to suggest, based on** the data transmitted to the Authority, that unapproved mining activities have occurred or are occurring.

Rationale

Regarding paragraph 1, we believe this provision would be more appropriately placed under DR 18 ('Rights and exclusivity under an exploitation contract'). We propose that paragraph be replaced with a provision with a requirement of Contractors and the Sponsoring State to declare to the ISA (via a notification procedure, set by the ISA) before embarkation of any

vessel or installation engaging in seabed mineral activities including a description of where in the Area it will be operating and its planned activities (e.g. research, exploration, exploitation, support) while there.

Regarding the newly proposed paragraph *2bis*, AIS is an automatic tracking system that uses transceivers on ships to send out information about its location. An accredited AIS can be monitored by the ISA and others and will promote safety by letting other marine users know of its position, whether the vessel is underway using engines, not under command, or restricted in its ability to maneuver.

Regarding paragraph 3, notification to the sponsoring State is also recommended to inform the State's performance of its regulatory duties. Jamaica's proposed amendment here is to ensure accuracy about the confines of the Secretary-General's powers and role.

Section 3

Enforcement and penalties

Regulation 103

Compliance notice and termination of exploitation contract

1. At any time, if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, the Secretary-General 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 considers appropriate to ensure compliance within a specified time period.
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 concerning any aspect of the compliance notice. Having considered the representations, the Secretary-General may confirm, modify or withdraw the compliance notice.
5. If a Contractor, in spite of warnings by the Authority, 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.

I - Members of the International Seabed Authority

Fiji

The establishment of a Compliance Committee is proposed.

Rationale

1. Concur with Norway and Costa Rica, that the SG seems to be overwhelmed with responsibilities. If the SG is the one who authorizes the operation to commence, then he receives report from the contractor and the inspector, compliance we feel should be independent.
2. A committee established within very clear boundaries will be able to operate this transparent accountable mechanism.
3. The SG in these current draft has a lot of powers.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

**Note: Council amendments are in Red and Pew comments are in Blue.

Regulation 103 Compliance action notice and termination of exploitation contract

1. At any time, [if it appears to the Secretary-General] **[based]** on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, **or if Regulations 4(5), 36(3), 52(8), 99(3) and 102(3) apply, or if requested by the Council to do so,** the Secretary-General shall, **with copy to the sponsoring State and the Council,** issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice. **The Secretary-General shall inform the Council of any violations by a Contractor.**

Alt. 1. At any time, if it appears to the Secretary-General on reasonable grounds that a Contractor is in breach of In the event of a principal organ of the Authority or the Commission reasonably determining that a Contractor has breached, or is at risk of breaching the terms and conditions of its exploitation contract, **or if requested by the Council to do so** the relevant organ may instruct the Secretary-General, with copy to the sponsoring State and the Council, to:

- (a) seek dialogue with the Contractor to discuss and attempt to resolve the issue;
- (b) issue written warnings, including warnings in relation to possible action the Authority may take in the event of failure to act or future breaches;
- (c) agree with the Contractor on an improvement plan, which shall include: actions to be taken to return to compliance, how the actions' effectiveness will be monitored and reported, the time permitted for action, and subsequent steps should the actions be unsuccessful, or should non-compliance continue;
- (d) agree with the Contractor a modification to the Plan of Work, in accordance with regulation 57;
or
- (e) issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice.

(1) bis. Actions taken under this Regulation by the Authority should be commensurate with the gravity, frequency and other circumstances of the actual or anticipated breach by the Contractor, which may include taking account of the Contractor's previous conduct under contract with the Authority.

(1) ter. Paragraph (1) bis. notwithstanding, where regulations 4(5), 36(3), 52(8), 99(3) and 102(3) apply, the Authority shall issue a compliance notice under paragraph 1(d).

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] considers appropriate to ensure compliance within a specified time period.

~~[2bis. A copy of the compliance notice shall be sent to the Sponsoring State.]~~

4. The Contractor shall be given a reasonable opportunity, **not exceeding 30 Days**, to make representations in writing to the Secretary-General concerning any aspect of **regulatory action taken by the Authority under paragraph (1)** ~~the compliance notice~~. Having considered the representations, the Secretary-General may confirm, modify or withdraw the **action compliance notice**.

5. If a Contractor, in spite of ~~[warnings]~~ **a warning raised** by the Authority, 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]~~ **for** wilful violations of the fundamental terms of the contract, **including compliance with Part XI of the Convention, [the Agreement]** ~~and the rRules, regulations and procedures~~ of the Authority, the Council ~~shall 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.

5bis. The Secretary-General shall publish compliance notices on the Seabed Mining Register and provide an annual report to the Council in respect of any compliance notices issued. Any action taken under this Regulation should be included by the Secretary-General in the annual compliance record prepared for each Contractor pursuant to Regulation 100bis.

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, **which must be in line with indicative penalties set out in the relevant Standards, and which will include any administrative costs incurred by the Authority as a result of the violation.**

8. The Secretary-General shall notify the Council as soon as reasonably practicable of any matter requiring the Council to issue an emergency order under article 162(2)(w) of the Convention, in accordance with regulation 4(4).

9. For the avoidance of doubt, the following non-exhaustive list of examples of non-compliance constitute a violation of the fundamental terms of the contract, Part XI of the Convention and the rules, regulations and procedures of the Authority, for the purpose of this Regulation

- (a) failure to maintain the required Environmental Performance Guarantee (regulation 26);
- (b) failure to maintain the required safety management system (regulation 30 bis.);
- (c) failure to maintain the required insurance (regulation 36);
- (d) failure to meet the reporting requirements provided by Regulations 38, 39 and 39bis;
- (e) failure to maintain the required environmental management system (regulation 46);
- (f) failure to pay the [annual reporting fee or the] annual fixed fee (regulations 84 and 85);
- (g) failure to comply with an environmental Standard issued by the Authority (regulations 45 and 94);
- (h) failure to comply with the financial terms of the exploitation contract (Part VII)

[... and add other examples]

Regulation 103 bis. Termination of Contract

1. An exploitation contract can only be terminated:

- (a) by all parties to the contract by mutual consent;
- (b) by the termination of State sponsorship, in accordance with regulation 21;
- (c) by the Contractor in accordance with the terms of the contract, as covered by section 10 of the Annex X to these regulations;
- (d) by the Authority in accordance with the terms of the contract, as covered by section 12 of the Annex X to these regulations; or by expiry of the term of the contract, without renewal.

2. Any suspension or termination of a contract by the Authority shall be by written notice to the Contractor, through the Secretary-General, which shall include a statement of the reasons for taking such action. The suspension or termination shall be effective 60 Days after such written notice, unless the Contractor within such period disputes the Authority's right to suspend or terminate the contract in accordance with Part XI, Section 5, of the Convention, in which case the contract shall only be suspended or terminated in accordance with a final binding decision in accordance with Part XI, Section 5, of the Convention.

Rationale

General Comment: The ISA enforcement strategy should include progressive actions to be taken in the event of non-compliance. Starting with initial dialogue, it could proceed in ascending order of severity to: a mutually agreed environmental improvement plan, a formal compliance notice, then (seeking to avoid if possible) a suspension notice pertaining to specified activities, monetary penalties, contract suspension, revocation of contract, and referring criminal prosecution to Sponsoring States. Non-compliance triggers for these enforcement actions should be clearly delineated.

Regarding paragraph 1, several ISA delegates have indicated that they do not agree with the current DR103 which provides that the Secretary-General could issue compliance notices. The ISA needs (as a matter of some urgency) to develop internal procedures and an institutional framework to enable decision-making authority in the case of urgent matters. As the wording 'Secretary-General' may be replaced by a different organ of the ISA, depending on policy decisions that need to be taken by the ISA in relation to its enforcement strategy and its institutional set-up, it would be more convenient to refer to the "relevant organ" in relation to compliance actions. The sponsoring State and the Council should also be notified of any compliance action to enable both to better carry out their respective regulatory duties to oversee the Contractor's activities.

For ease of reference, a separate paragraph (1ter) should list the Regulations that specifically cross-refer to a compliance notice being triggered:

- DR36(3) is a failure by a Contractor to maintain requisite insurance.
- DR4(5) is where the LTC determines that Serious Harm to the Marine Environment is attributable to a breach of exploitation contract.
- DR52(8) is where non-compliance with the EMMP has been identified.
- DR99(3) is where an Inspector has issued a notice which has expired, and the matter remains unresolved.
- DR102(3) is where there is reasonable evidence to suggest unapproved mining activities.

Also, the Regulations are not clear about the difference between a ‘compliance notice’ pursuant to DR 103 and an ‘emergency order’ pursuant to UNCLOS Article 163(2)(w) (and used in DR4(4)). Presumably, the latter can only be issued in more limited circumstances (i.e. only to prevent serious harm to the marine environment), and as an emergency measure rather than a compliance tool. As such, it does not necessarily require the same due process requirements as are included in this DR103. But it may be useful for this point to be considered and explained further, and for there to be some cross-reference between this DR103 and DR4(4) (the provision relating to emergency orders).

Regarding the proposed deletion of subparagraph 2bis, this point (raised by the UK) is important, and might be better placed in the proposed alternative paragraph 1.

Regarding paragraph 5, suspension or termination of a contract should be mandatory (not optional) where after warnings there are continued serious, persistent or wilful violations by the Contractor. The terms of the contract already require compliance with Rules of the Authority, so there is no need to repeat that here. The proposed wording ‘the Agreement’ is also not needed because DR1(2) provides that ‘the Agreement and part XI of the Convention shall be interpreted and applied together as a single instrument. [...] and references in these regulations to the Convention are to be interpreted and applied accordingly’.

Regarding paragraph 5bis, the proposed insertion by UK (with additional edits) will assist with public access to information and Council-Contractor oversight, and may also act as a compliance incentive.

Regarding paragraph 6, Standards would be helpful to ensure consistency with regards appropriate levels of financial penalties, with cost-recovery also considered.

Regarding the newly proposed paragraph 9, this is not intended to be an exhaustive list of triggers for enforcement action, but it may be a good idea for the ISA to agree (and publish) such a list.

Lastly, the draft Regulations do not at present list the circumstances under which a contract may be terminated. Therefore, we propose a new Regulation (103bis), drawing upon DR103 (the circumstances that may trigger a compliance action), section 12 of Annex X to these Regulations (which provides standards contract terms for termination), and also UNCLOS Annex III, Article 18 (concerning the circumstances under which a contract may be terminated as a penalty (and reflected here in subparagraph (d))).

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.

I - Members of the International Seabed Authority

Fiji

1. What is the Authority in this context? Are we approving to take on the responsibility of the Contractor?
2. The word reasonable needs to be defined clearly and what are the limitations of this reasonable action?
3. The cost for any breaches would be a huge amount and therefore needs to be clearly defined on the responsibility.

Rationale

1. Who is the Authority? It is ALL member states. Are we saying that we are willingly taking on this responsibility of the contractor?
2. Agree with Russian Federation – definition of reasonable in this context is necessary.

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

**Note: Council amendments are in Red and Pew comments are in Blue.

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

Rationale

Mitigate' is a defined term and should be capitalized

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.

I - Members of the International Seabed Authority

Fiji

Rationale

1. Agree with PEW on this as it does not reflect any enforcement instruction in it the current wording.
2. Also concur with Deep Sea in that Part XI should be aligned to a Liability Regime or a Compliance Committee

II - Observers to the International Seabed Authority as referred to in rule 82 of the Rules of Procedure of the Assembly

The Pew Charitable Trusts

**Propose deleting this provision

Rationale

This provision seems redundant (duplicative of UNCLOS) and so could be deleted. Alternatively, DR3(c) (regarding coordination between the ISA's and sponsoring states' monitoring and enforcement measures) could be relocated here. There could also be more specific wording included here regarding the inter-play between the ISA and the State's regulation. E.g. requiring sponsoring States and the ISA to share monitoring data and Contractor reporting, and to keep each other updated with regards any regulatory measures undertaken.