

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

Informal Working Group on 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 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:

China

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

Regulation 96 Inspections: General

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.

***Note: China’s amendments are in Blue**

1. The Council shall ~~on the basis of the recommendations of the Commission, establish~~ ~~[an independent Inspectorate as the]~~ appropriate mechanisms ~~[mechanism]~~ for inspection, as provided for in articles 153 (5), ~~and~~ 162 (2) (z) and 165 (2) (m) of the Convention.

1.bis The Council shall ~~on the basis of the recommendations of the Commission~~ 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. ...aboard all vessels and Installations ~~whether offshore or onshore,~~ used in the Area by the Contractor to carry out Exploitation activities under an exploitation contract ~~as well as to enter its offices wherever situated.~~

3. The ~~[Inspectorate]~~ Secretary-General shall give reasonable notice to the Contractor of the projected time and duration of inspections for a period as necessary, the names of the Inspector(s) and any activities that the Inspector(s) 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 [Inspectorate] has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the~~

~~[Inspectorate] may, where practicable, exercise the right to conduct an inspection without prior notification, [pursuant to Regulation 4(5)].~~

~~4. Alt 1 [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 facilitate the actions of]~~ **[shall cooperate with the Inspectors and give full assistance to]** 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 **used in the Area in connection with activities in the Area** by Inspectors;

(b) Cooperate with and assist in the inspection of any vessel or Installation or equipment **used in the Area in connection with activities in the Area** conducted pursuant to this regulation.....

(c) Provide access to all relevant areas, items and personnel [] or on vessels and Installations **used in the Area in connection with activities in the Area** at all reasonable times.....

(f).....where required by the ~~[Secretary-General]~~ **[Inspectorate]** Council,

6. Inspectors shall:

(b) ~~[Refrain from 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.~~

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

Regarding paragraph 1, Article 165(2)(m) of the Convention provides that the LTC shall “make recommendations to the Council regarding the direction and supervision of a staff of inspectors”. Accordingly, the Council shall establish the inspection mechanism on the basis of the recommendations of the LTC in accordance with Article 165(2)(m) of the Convention. The Convention neither provides for nor presupposes the establishment of a so-called inspection body in the future. China believes that the inspection, compliance and enforcement mechanism should be established and implemented in accordance with the existing legal framework of the

Convention, giving full play to the respective roles of the Council, the LTC and the inspectors, rather than establishing a new body outside the provisions of the Convention.

Regarding paragraph 1(bis), Article 165(2)(m) of the Convention provides that the LTC shall “make recommendations to the Council regarding the direction and supervision of a staff of inspectors”. Therefore, the Council should approve and maintain a code of conduct for inspectors and inspections based on the recommendations of the LTC.

Regarding paragraph 2, the geographical scope of the inspection is clearly defined in the Convention. Article 153 (5) provides that the Authority shall have the right to inspect all installations in the Area used in connection with activities in the Area. Therefore, the regulation should only require the Contractor to allow inspectors to inspect vessels and installations used by the Contractor in the Area for carrying out exploitation activities under an exploitation contract. Contents of the draft text that go beyond the provisions of the Convention should be deleted.

Regarding paragraph 3, the Secretary-General, as the chief administrative officer of the Authority, shall exercise the function of “notification”. Exploration Regulations, such as Section 14.2 of Annex IV to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, provide that “the Secretary-General shall give reasonable notice to the Contractor”. The Exploitation Regulations should be aligned and consistent with the Exploration Regulations, and the notification function should continue to be exercised by the Secretary-General. It is suggested that the reference to an inspection without prior notification is not realistically feasible and should be deleted.

Regarding paragraph 4 Alt 1, Article 153 (5) of the Convention provides that the Authority shall have the right to inspect all installations in the Area used in connection with activities in the Area. Paragraph 4 has a clearer geographical scope than this Alt, so it is recommended to delete 4 Alt and retain paragraph 4.

Regarding paragraph 5, Article 153 (5) of the Convention provides that the Authority shall have the right to inspect all installations in the Area used in connection with activities in the Area. 5 (a) (b) (c) shall be limited to vessels, installations or equipment “used in the Area in connection with activities in the Area”. 5 (f) requires the Contractor to accept the deployment of remote real-time monitoring and surveillance equipment, which involves substantive matters of the inspection and shall be requested by the Council.

Regarding paragraph 6 (b), The Inspector shall not at any time unduly interfere with the safe and normal operations of the Contractor and of vessels and installations,

and the exception “reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract” unduly expands the Inspectors’ power. In accordance with Article 162(2)(z) and Article 165(2)(m) of the Convention, the Inspector shall inspect activities in the Area to determine whether the provisions of this Part, the rules, regulations and procedures of the Authority, and the terms and conditions of any contract with the Authority are being complied with. The inspectors’ power should be limited to inspecting, recording, and reporting on activities in the Area. If the Inspector finds that “the Contractor is operating in breach of its obligations under an exploitation contract”, he/she may record this in the inspection report and report it to the Secretary-General, the LTC and the Council, rather than interfering with the safe and normal operations of the Contractor and of vessels and installations.