

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

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:

Inspection, Compliance, and Enforcement Working Group

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

The Ocean Foundation, Observer

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

Section 1: Inspections

Regulation 99: Inspectors' power to issue instructions

Section 2: Monitoring

Regulation 102: Vessel notification, electronic monitoring and data reporting

Section 3: Enforcement and penalties

Regulation 104: Power to take remedial action

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.

Section 1, Regulation 99

1. If, as a result of an inspection, an Inspector has [reasonable grounds] [to determine] 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, including Underwater Cultural Heritage, or is otherwise in breach of the terms of its exploitation contract, the Inspector [shall] give any instruction he or she considers reasonably necessary to remedy the situation, in accordance with the Standards, including

Section 2, Regulation 102:

2. 2. All [Installations] [mining vessels] and mining collectors [involved in exploitation activities under the Exploitation contract [activities]] shall be fitted with [an electronic monitoring system] [a satellite positioning device]. Such system shall record [where technically feasible] in real time, inter alia, the date, time and position of all mining activities, and, where technically possible, shall also provide environmental data including Underwater Cultural Heritage. The detail and frequency of reporting shall be in accordance with the Standards and taking into account the Guidelines.

2.bis The Contractor shall use the best-available environmental and archeological 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.

2.ter The electronic monitoring system shall ~~[should]~~ also encompass the monitoring of mining impacts [and be in accordance with the Environmental Monitoring and Management Plan as well as include a survey of the seabed to identify Underwater Cultural Heritage, implementing the obligations under Regulation [46ter], allowing for adaptive management during the mining operation.

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Section 3, Regulation 104:

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, ~~[and thus extinguishing the Contractor's debt and putting an end to the dispute].~~

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

Without real time video monitoring, it is all but a foregone conclusion that operations would destroy, potentially without even knowing, any tangible Underwater Cultural Heritage (shipwrecks, human remains, or fossils). Real time video monitoring is absolutely essential to underpin robust regulations regarding the cessation of operations should underwater cultural heritage be discovered, and enforcement thereof.

In DR 104(2) the bracketed language would be inconsistent with the way liability has been conceived elsewhere in the regulations. For example, draft Regulation 26(8) states "The provision of an Environmental Performance Guarantee by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee." Section 7 of the draft Standard Clauses for an Exploitation Contract (Annex X) on Responsibility and Liability explicitly "survives the termination of the Contract and applies to all damage caused by the Contractor regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term"