

Annex III Implementing an Inspectorate: suggested textual amendments to Part XI, draft exploitation regulations

Red text: revised text per Facilitator's draft ISBA/27/C/IWG/ICE/CRP.1/Rev.2, October 2022.

Blue text: suggested amendments to Facilitator's text.

Section 1 Inspections

Regulation 96

Inspections: general

1. The Council shall hereby establish ~~an independent Inspectorate as a subsidiary organ of the Council and as the~~ appropriate ~~mechanisms~~ ~~{mechanism}~~ for inspection as provided for in articles 153 (5) and 162 (2) (z) of the Convention.

1. bis The Inspectorate shall comprise an Inspector-General appointed in accordance with regulation 96 bis and such staff as the Inspectorate may require.

1. ter The Secretary-General shall provide administrative support to the Inspectorate.

1. quater Inspections performed in accordance with this Part shall be undertaken by Inspectors who meet the qualifications set out by the Council pursuant to Regulation 97(1).

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

1. sex. The Council shall ensure inclusivity, gender equality, and health and safety, in recruiting and managing its Inspectors.

2. The Contractor shall permit the Authority to send its Inspectors, who shall [upon request by sponsoring States, ~~[any other State Party] or other party concerned~~] be accompanied by a representative of the sponsoring State or States, ~~[any other State Party] or other party concerned~~ or any person reasonably required to assist an Inspector including an interpreter, ~~[in accordance with article 165 (3) of the Convention]~~ aboard all 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, ~~[States Parties]~~ Members of the Authority, in particular the sponsoring State or States and States in whose national jurisdiction or on whose vessel the Authority wishes to conduct inspection activities, shall assist the Authority ~~Council, the Secretary-General~~ the Inspector-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. The ~~Secretary~~ Inspector-General shall give reasonable notice to the Contractor of the projected time and duration of inspections, 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 ~~Secretary~~ Inspector-General has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the ~~Secretary~~ Inspector-General may, where practicable, exercise the right to conduct an inspection without prior notification.

~~4. Inspectors may inspect during the whole lifecycle of the activities in the Area any relevant documents, data or sample and any vessels or Installations used in the Area in connection with activities in the Area, including its log, personnel, equipment, records and facilities.~~

~~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. [Note: Alt 1 better placed in / moved to regulation 98].~~

5. The Contractor and its subcontractors, agents and employees 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 by Inspectors;

(a)bis Keep the Secretary Inspector-General and sponsoring State or States notified of proposed vessel schedules including support and supply vessels, and inform the Secretary Inspector-General at least 30 Days before any vessel commences its voyage to a Contractor's Contract Area to facilitate the conveyance of Inspectors and representatives of the sponsoring State or States of States parties, where appropriate and to immediately inform the Inspector-General if there is a change to proposed vessel schedules due to operational, logistical or unforeseen circumstances;

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

(b) bis Provide reasonable facilities, including where appropriate, food and accommodation, to Inspectors;

(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 relevant monitoring equipment, books, documents, papers, records and passwords which are necessary and directly pertinent 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 Inspector-General, and facilitate the activities of Inspectors to observe and inspect the Contractor's monitoring operations, including access in deploying such to monitoring and surveillance equipment and having access thereto; and

(g) Not obstruct, intimidate or interfere with Inspectors in the performance of their duties, for representatives of sponsoring States, any other State Party, or other party concerned who accompany these Inspectors, as identified in paragraph 2 of this Regulation or any persons accompanying an Inspector pursuant to paragraph 2.

(g) bis Ensure that the Master of the vessel or Installation puts in place procedures to ensure the personal safety, security and general welfare of Inspectors and any persons accompanying an Inspector pursuant to paragraph 2.

6. Inspectors shall:

(a) Carry out inspections in accordance with internationally accepted principles of good seamanship to avoid risks to the safety of life at sea and where appropriate follow instructions and directions pertaining to the safety of life at sea given to them by the Contractor and the master of the vessel; and

(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.~~

(b).bis ~~{An Inspector shall}~~ Adhere to the Authority's code of conduct for inspectors and inspections established pursuant to draft regulations 96 (1) quinquies.

(c) Indicate in their reports all vessels, installations, equipment, facilities, data and samples monitored or otherwise examined, all documents reviewed or copied, all questions posed to the Contractor or any personnel.

Regulation 96 (bis) Inspector-General

1. The Council shall appoint, based on the recommendations of the Commission, an officer with suitable qualifications and appropriate experience in compliance assurance, and health, safety and environment in marine mining or other related marine extractive industries, to be Inspector-General.
2. Subject to the direction and oversight of the Council, the Inspector-General shall perform the functions entrusted to the Inspector-General by these regulations.
3. The Inspector-General may perform any of the functions of an Inspector.
4. The functions of the Inspector-General shall be supported by the Secretary-General in relation to administrative matters, and by the Commission in relation to technical matters.
5. The Council shall keep the Inspector General's performance under review.

Regulation 96 (ter) Inspector-General's functions

1. Without limiting the powers and functions conferred upon another organ of the Authority, the Inspector-General shall:
 - (a) Administer the Inspectorate in accordance with policies issued by the Council relating to inspection, compliance and enforcement;
 - (b) Appoint Inspectors as required from the approved roster of inspectors, according to the inspection programme and schedule;
 - (c) Implement and manage Inspector training programmes;
 - (d) Provide advice to the Council on matters relating to inspection, compliance, and enforcement including clarifying what constitutes non-compliance;
 - (e) Establish procedures and routines for investigation of possible instances of non-compliance;
 - (f) Establish procedures to facilitate third party reporting of allegations of non-compliance;
 - (g) Receive and review Inspector reports and other data and information related to the Inspectorate's compliance and enforcement mandate;
 - (h) Report to the Council the results of inspections and resulting recommendations for enforcement action, in a timely and comprehensive manner;
 - (i) Undertake effective monitoring of the health, safety and environmental aspects of mining operations;
 - (j) Issue compliance notices pursuant to regulation 103;
 - (k) Conduct an inquiry into any Incident;

(l) Collaborate with other organs of the Authority relating to inspection, compliance and enforcement, including the Commission and the Secretary-General;

(m) Consult and cooperate with sponsoring States, flag States, port States and competent international organizations as regards compliance and enforcement measures;

(n) Undertake compliance promotion activities to promote understanding of and compliance with the Rules of the Authority, including dissemination of best practice arising from inspection activities;

(o) Notify the Commission immediately for its consideration and recommendations of possible instances requiring the Council to issue emergency orders pursuant to article 162, paragraph 2(w), of the Convention.;

(p) Perform any other duties that the Council directs in writing.

2. The Inspector-General shall act in a way that is compatible with the principles of best regulatory practice, including that any regulatory action shall be proportionate, accountable, consistent, transparent, and targeted only at cases where needed in accordance with the code of conduct approved by the Council under regulation 96(1)quinquies.

3. The Inspector-General may appoint a competent independent person to perform any or all of the functions of an Inspector where the nature or subject matter of an inspection requires specialist knowledge or experience that is not available on the approved roster of Inspectors. The Inspector-General shall report any such appointment to the Commission.

4. Within 3 months of the end of a Calendar Year the Inspector-General shall complete an annual inspection, compliance and enforcement report, together with a non-technical summary, and submit the report and summary to the Commission and the Council for their consideration.

5. The report shall include compliance records for each contractor, details of inspections and regulatory actions undertaken by the Inspector-General, details of any regulatory action taken by a sponsoring State or States as advised in writing to the Inspector-General, any corrective actions undertaken by a Contractor and any recommendations as to any enforcement action to be taken by the Council to which regulation 100(2) refers. The report shall also include any findings and recommendations arising from inspections that may contribute to the development of Good Industry Practice, Best Environmental Practices and Best Available Techniques.

6. The Commission shall provide the Council with any written comments or recommendations on the report prior to the Council's consideration.

7. The Secretary-General shall make publicly available a copy of the Inspector-General's report and summary on the Authority's website.

Regulation 96 (quater)

Inspectorate: periodic review

1. Every 5 years from the date of establishing an Inspectorate, the Council shall commission through the Secretary-General an independent review of the Inspectorate to ensure that the manner of its operation and activities accords to best international regulatory practice.

2. In the light of the review, the Council may, taking into account any recommendations of the Commission, recommend changes to improve the way the Inspectorate operates.

Regulation 97

Inspectors: Appointment and supervision

~~1. The Council, shall on the basis of the recommendations of the Commission, determine the relevant qualifications and experience appropriate to the [areas of duty] of an Inspector under this Part. [Based on that the Secretary-General will establish a roster of Inspectors.]~~

[1. Alt 1. The Council shall establish a roster of inspectors, based on the recommendations of the Commission and Inspector General on the relevant qualifications and appropriate experience required to perform their duties under these Regulations. [The roster shall be administrated by the Inspectorate and reviewed [annually]].

[1.bis [States Parties] [Each Member of the Authority] may, subject to the requirements of this regulation, [designate] [nominate] its experts nationals as Inspectors for inclusion consideration in the roster.

1. ter ~~[Subject to consideration of protection of personal data, the roster of Inspectors shall be made publicly available on the Authority's website.]~~

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) and in accordance with the Standards and taking into account the Guidelines.~~

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

[4. The Inspectors shall be independent ~~[from undue interference]~~ in the fulfilment of their tasks.

5. ~~[Without prejudice to their enforcement under international law, measures adopted by the Inspectors shall be effectively enforceable by Sponsoring States in their national legal orders. Inspectors shall report to the [Secretary-General] in writing any difficulties relating to the enforcement of their measures under national law.~~ The Inspectorate will work with the relevant sponsoring State to ensure that inspections performed by Inspectors are aligned with enforcement at the national level.

6. Inspectors may be required to undertake relevant training programmes at the request of the Inspector-General ~~or the Commission~~ Details of any training undertaken by Inspectors shall be included in the Inspector-General's annual report to the Council under regulation 96ter(4).

7. The Council may, for reasonable cause, remove an Inspector from the roster, based on the recommendations of the Commission or on the recommendations of the ~~Secretary~~Inspector-General under regulation 101(23).]

Regulation 98 Inspector' powers

~~[1.bis Inspectors shall:~~

~~(a) follow all reasonable instructions and directions pertaining to the safety of life at sea given to them by the Contractor or the captain; 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 Inspectors have reasonable grounds for believing that the Contractor is operating in breach of its obligations under an exploitation contract.]~~

1. An Inspector may, for the purposes of monitoring or enforcing compliance with the Rules of the Authority and the terms of an 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;

Commented [A1]:

For discussion: Should states have the exclusive ability to nominate experts or should also individual applicants be able to apply

Commented [A2]:

For discussion: Should this be fleshed out more – for example as follows (based on UNCLoS):
Inspectors shall have no financial interest in any activity relating to exploration and exploitation in the Area. Inspectors shall act in their personal capacity. In the performance of their duties they shall not seek or receive instructions from any government or from any source other than the Inspector-General and the Council. Each member of the Authority shall respect the independent character of the inspectors and shall refrain from all attempts to influence any of them in the discharge of their duties

(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;

(b).bis Inspect any relevant documents or items which are necessary to monitor the Contractor's compliance ~~under an exploitation contract and the Rules of the Authority~~, all other recorded data and samples and any vessel or Installation used in connection with activities in the Area including its log, personnel, equipment, records and facilities; [Moved down from regulation 96(4)].

(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 in the Area~~;

[(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; [and, unless such procedures will unreasonably interfere with the Contractor's operations; and]].

~~(1) bis~~ Upon written authorization from the Inspector-General, perform any other function or duty relevant to the functioning of the Inspectorate

2. An Inspector may instruct any Contractor, its employees, subcontractors, agents 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 ~~shall~~ document any site visit or inspection activity and ~~may shall~~ use 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 ~~[all]~~ 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' powers to issue instructions

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, 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, 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;] [A requirement to undertake specific tests or monitoring and to furnish the Authority Inspectorate Inspector-General with the results or report of such tests or monitoring within a set period];~~

(b) An ~~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;

(c) An ~~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.] [An written instruction requiring a suspension in some or all mining activities for a specified period.]~~

2. An Inspector may issue an instruction under paragraph 1 either orally or in writing and ~~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. If the instruction is issued orally, the Inspector must confirm it in writing and give it to the person concerned at the earliest opportunity.

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

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

3. ter An instruction shall specify the information to be provided to the Inspector by the Contractor to demonstrate the steps being taken to implement the instruction within the specified time.

3. quater An instruction is effective from the time fixed by the Inspector and remains in force until set aside by the Inspector-General or until the Inspector's instructions have been complied with within the specified period or the instruction lapses at the end of the specified period.

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

3. septies Within three days of the expiry of the specified period or any extension thereto under paragraph 3bis the Inspector-General shall determine whether the instruction has been complied with by the Contractor. Subject to paragraph 3 octies, where a Contractor has failed to comply with a written instruction or the circumstances giving rise to the instruction remain unresolved, the Inspector-General shall thereafter exercise the powers conferred upon the Inspector-General under regulation 103.

3. octies In the case of a written instruction issued under paragraph 1(d), where the circumstances giving rise to a suspension in some or all mining activities are not resolved or are unlikely to be resolved, the Inspector-General shall notify the Council immediately. The Council shall decide if the suspension should continue, including the placing of conditions on any recommencement of activities, taking into account any recommendations of the Commission.

~~3. Any instruction issued under paragraph 1 above [shall be in force] is effective from the time fixed by the Inspector and remains in force until set aside by the~~

~~Inspector-General or until the Inspector's instructions have been complied with [until the Contractor has executed the instruction] [for a specified period, not exceeding seven 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 [Inspector] [Inspectorate] Inspector-General 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 [where the issue remains unresolved], the [Secretary-Inspector General] [Inspectorate] may thereafter exercise the powers conferred upon the Inspector-General [Secretary-General] [Inspectorate] under regulation 103. The Secretary-Inspector-General shall exercise these powers to prevent [probable] imminent danger to the health or safety of any person or [probable, imminent, and] serious harm to the environment [arising out of activities in the Area].~~

4. Nothing in this regulation shall preclude the Council from issuing emergency orders pursuant to article 162, paragraph 2(w), of the Convention.

Regulation 100 **Inspection Reports**

1. ~~[Immediately after] [At] the end of an inspection, the Inspector shall [prepare] [deliver] a report [promptly to the Inspectorate Inspector-General, [in accordance with the template to be prescribed in the standards], setting out the findings and any recommendations for improvements in [performance], procedures or practices by a Contractor. The [Inspector] Inspectorate Inspector-General shall send the report to the Secretary-General, [the Commission, and the Council as soon as it is completed] and the Secretary-General shall send immediately 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 and publish a copy of the report in the Seabed Mining Register, except for Confidential Information which shall be redacted.~~

1.bis The Contractor may within ~~[7 thirty 30] Days of the date of the Inspector's report, provide [to the Secretary Inspector-General] comments to on the Inspector's on his or her findings and recommendations. [The Inspector will forward the comments to the Secretary-General].~~

1.ter The sponsoring State or States shall provide to the ~~Secretary-Inspector-General~~ details of any regulatory or other action taken or to be taken as a result of the Inspectors' findings or recommendations.

2. The ~~[Secretary-General] [Inspectorate] Inspector-General~~ shall in their annual report ~~annually~~ to the Council under regulation 96(1)(k) ~~ter~~ include details on the findings and recommendations following the inspections conducted in the prior Calendar Year, ~~[as compiled in a report by the Inspectors]~~ and shall make any recommendations to the Council on any regulatory enforcement action to be taken by the Council under these regulations and an exploitation contract ~~[taking account of any regulatory action taken by the sponsoring State or States or corrective actions taken by a Contractor to address the findings or recommendations.]~~ The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.

~~[2.bis Inspection reports drawn up by Inspectors shall constitute admissible evidence in administrative or judicial proceedings.]~~

3. The ~~[Secretary-General] [Inspectorate] Inspector-General~~ shall report acts of violence, intimidation or abuse against or the wilful obstruction or harassment of an Inspector ~~[in the course of their duty] by any person or the failure by a Contractor to comply with regulation 96 to the Council and take the appropriate measures under regulations 99 and 103 respectively [to the Secretary-General].~~

3.bis. The Inspector-General shall send any such reports under regulation 100(3) to the Secretary-General, who shall then report such acts immediately to the

sponsoring State or States and the flag State of any vessel or Installation concerned, the national State of the Inspector ~~[and the national State of the representatives of sponsoring States, any other State Party, or other party concerned who accompany the inspector]~~ for consideration of the institution of proceedings under national law; and

~~[(b) Report such acts to the [Secretary-General] and consider the exercise of powers under regulation 103.]~~

~~4. The [Inspectorate] [Inspector] Inspector-General shall [also report acts referred to in para. 3 immediately to the [Secretary-General] and shall] take the appropriate measures under Regulation 103.~~

Regulation 101

~~[Review of the Inspector's decision]~~ [Complaints]

1. A Contractor who considers that an Inspector has acted unreasonably or outside of the scope of their powers under this Part may complain in writing ~~setting out the grounds for the complaint to the [Secretary-General] [Council] [Inspectorate]~~ Inspector-General, who shall consider the ~~grounds for the complaint~~ as soon as practicable.

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

2. The ~~[Secretary-General] [Inspectorate]~~ Inspector-General may take ~~may~~ such reasonable action as is necessary in response to the complaint, ~~which may include confirming, setting aside or varying an Inspector's decision, or substituting any other decision for the decision of the Inspector.~~

~~[3. The [Inspectorate] Inspector-General shall issue a report to the Authority Council and the Commission describing the complaint and the action taken in response to such a complaint, together with any recommendations for the Council's consideration.]~~

Regulation 102

Vessel notification, electronic monitoring and data reporting

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

2. All [Installations] ~~[mining vessels]~~ and mining collectors [involved in exploitation activities under ~~the an~~ 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. 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 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]~~, implementing the obligations under Regulation [46ter], ~~allowing for adaptive management during the mining operation.]~~~~

3. The ~~[Secretary-General] [Inspectorate]~~ Inspector-General shall ~~issue a compliance notice~~ take appropriate measures under regulations 99 and 103 respectively, where [there is reasonable evidence to suggest based on] the data transmitted to the Authority that unapproved mining activities have occurred or are occurring.

3.bis The plan shall include:

(a) a description of the monitoring technology and system to be implemented, including the types of data to be collected and monitored, and frequency of monitoring and data that can be collected and, where technically feasible monitored in real-time;

(b) a description of how the monitoring data will be transmitted during operations, how the data will be labelled and monitored by qualified personnel, and how the data will be stored;

(c) the qualifications and proposed location of the personnel monitoring the data; and

(d) a description of the procedures for providing the Authority and the sponsoring State or States access to or receipt of the monitoring data for the purposes of monitoring compliance with the terms of an exploitation contract and collection of data.

~~4. A Contractor shall permit the Inspectors having access to any monitoring or surveillance systems and equipment.~~

5. All data transmitted to the Authority [and the Inspectorate] under this regulation shall be transmitted to the [Secretary-General and the] sponsoring State or States.

Section 3

Enforcement and penalties

Regulation 103

Compliance notice, [suspension] and termination of exploitation contract

1. Pursuant to DR 99(3) septies or at any time, if it appears to the ~~{Secretary-General}~~ ~~[Inspectorate]~~ Inspector-General based on reasonable grounds that a Contractor is in breach of the terms and conditions of its exploitation contract, Part XI and or the rules, regulations and procedures of the Authority, the ~~{Secretary-General}~~ ~~[Inspectorate]~~ Inspector-General shall issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice, with a copy to the sponsoring State, ~~{and shall report immediately to the Council on the issue of the notice, including details of the facts and circumstances giving rise to such 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]~~ Inspector-General considers appropriate to ensure compliance within a specified time period.

~~[2.bis Actions specified in the compliance notice should shall be commensurate with proportionate to 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 written warning by the Authority.

4. The Contractor shall be given a reasonable opportunity [not exceeding 30 days] to make representations in writing to the ~~{Secretary-General}~~ ~~[Inspectorate]~~ Inspector-General concerning any aspect of the compliance notice issued under paragraph 1. Having considered the representations, the ~~{Secretary-General}~~ ~~[Inspectorate]~~ Inspector-General may confirm, modify or withdraw the compliance notice.

5. If a Contractor, in spite of ~~{one or more}~~ written warnings by the ~~{Authority}~~ ~~[Inspectorate]~~ Inspector-General, 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 or 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.

~~5.bis The Secretary-General Inspector-General shall make public any compliance notice and shall present in their annual report to the Council details of on any compliance notices the Authority has issued.~~

5. bis Alt 1 The Secretary-General shall make public any compliance notice issued to a Contractor, any response received from the Contractor or Sponsoring State or States, subject to the confidentiality requirements of Regulation 90. The Inspector-General shall present in their annual report to the Council a summary of any compliance notices the Inspectorate has issued.

6. In the case of any violation of an exploitation contract [not covered by paragraph 5 above], 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.]

7. Except 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.

7.bis. The Council will bring to the attention of the Assembly instances of non compliance, as established in article 162 (2)(a) of the Convention.

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).

Regulation 104

Power to take remedial action

1. Where a Contractor fails to take action required under regulation 103, the Authority ~~through the Secretary-General~~ 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, ~~[and thus extinguishing the Contractor's debt and putting an end to the dispute].~~

Regulation 105

Sponsoring States

1. 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, Rules of the Authority and the terms and conditions of the exploitation contract.

Schedule

Use of terms and scope

“Inspector” means a person appointed and acting under Part XI of these regulations.

"Inspector-General" means the officer appointed by the Council under Part XI of these regulations to administer and manage the Inspectorate and includes any officer acting in that capacity.

"Inspectorate" means an organ of the Council established under Part XI of these regulations.