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Draft regulations on exploitation of mineral resources in the Area

The Facilitator's fourth revised draft text on Part XI

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Explanatory note

1. I have prepared this fourth revised text (“the Facilitator’s fourth revised text”) in the enclosure to assist discussions in the Informal Working Group on Inspection Compliance and Enforcement, with a view to advancing the finalisation of Part XI of the Draft Regulations.
2. I have adopted a similar approach to the revisions as with the previous versions of the text, and I refer to the Facilitator’s further revised text in respect of the working modalities ([ISBA/28/C/IWG/ICE/CRP.1](#)).
3. The views expressed and the textual proposals made during and after the meeting in July 2023, either by individual participants or the result of group discussions, were considered in the preparation of this fourth revised text.
4. An outstanding item is to identify the most appropriate mechanism for directing and supervising a staff of inspectors who shall inspect activities in the Area as envisaged by article 162(2)(z) of the Convention. From our meeting in July 2023, I got the impression that many participants were willing to continue the negotiations based on a suggested hybrid model, and participants also expressed that it was contra productive to continue the negotiations based on a text that contained many contradictions. Therefore, I have attempted to streamline the relevant draft regulations to accommodate for those concerns and I have strived at ensuring the implementation of independence, effectiveness, impartiality and responsiveness. It is important for me to stress that this proposed revision should be seen as a basis for the ongoing negotiations, and I suggest that we focus on clarifying the affiliation between the Compliance Committee and the different organs (a), the respective functions of relevant organs (b), and the specific details of the mechanism for it to work in an independent and transparent manner (c).

5. When we have come closer to an appropriate mechanism, it will be imperative to look further into the development of standard and guidelines and operating procedures to ensure that responsibilities, notification and reporting requirements are clearly documented, and I kindly ask participants to have this in mind during the negotiations of the fourth revised text.

6. The content of this text is without prejudice to the position of any participants on any of the matters referred to therein and does not preclude the consideration of matters not included in the document.

Enclosure

Part XI Inspection, compliance, and enforcement

Section 1 Inspections

Regulation 96 The inspection mechanism

1. The Commission shall establish a Compliance Committee, within the Commission, pursuant to regulation 96 bis.
2. The Secretary-General shall appoint an officer with suitable qualifications to be Chief Inspector. The Chief Inspector shall undertake the day-to-day management and administration of a Roster of Inspectors and inspection programme.
3. The Council shall, on the basis of the recommendations of the Commission, approve and maintain a code of conduct for Inspectors.

Regulation 96 bis

The Compliance Committee

1. The Compliance Committee shall be comprised of ten [fifteen] members of the Commission with appropriate expertise to carry out the functions of the Compliance Committee in accordance with this regulation.
2. The Compliance Committee shall, inter alia:
 - (a) provide recommendations to the Council on the administration and management of the roster of Inspectors and matters relating to inspection, compliance and enforcement in accordance with relevant policies or directions issued by the Council;
 - (b) Review the annual reports of Contractors;
 - (c) Examine reports and recommendations from the Chief Inspector and Inspectors, and other relevant data and information;
 - (d) Report to the Council, the results of inspections and resulting recommendations for enforcement action, in a timely and comprehensive manner and coordinate compliance matters with other organs of the Authority that play a role in inspection, compliance and enforcement;
 - (e) Convene, with the support of the Secretary-General, a process to liaise with Contractors in cases of non-compliance or complaints;
 - (f) Consult and cooperate, through the Secretary-General with sponsoring States, flag States, port States and competent international organizations as regards compliance and enforcement measures;
 - (g) Make recommendations to the Council for the issue of emergency orders and appropriate penalties; and
 - (h) Perform any other duties that the Council directs in writing.

3. The Compliance Committee shall develop its own rules of procedure, under the rules of procedure of the Commission.

Regulation 96 ter

Access to inspections

1. The Chief Inspector shall give reasonable notice to a 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. The activities of the Inspector(s) should in any case not unnecessarily impede activities in the Area.

2. Where the Compliance Committee or the Chief Inspector have reasonable grounds to consider the matter to be so urgent that reasonable notice cannot be given, the Compliance Committee or the Chief Inspector shall instruct an Inspector to conduct an inspection without prior notification, and shall cooperate with a Contractor to conduct the inspection as soon as practically possible.

3. Inspectors may inspect any relevant documents necessary to monitor a Contractor's compliance under its exploitation contract and the Rules of the Authority which include inter alia, all recorded data and samples and any ships or Installation used by the Contractor to carry out Exploitation activities and activities related to such exploitation activities in the Area, including its log, equipment, records and facilities, as well as interview relevant personnel.

4. The Contractor, its subcontractors, agents and employees shall cooperate with Inspectors and give full assistance to Inspectors in the performance of their duties, and shall:

(a) Accept and facilitate the prompt and safe boarding and disembarkation of ships and Installations used to carry out Exploitation activities and activities related to such activities in the Area by Inspectors;

(a) bis. Keep the Chief Inspector and sponsoring State or States notified of proposed ship schedules including support and supply vessels, and when feasible, inform the Chief Inspector before any ship commences its voyage to a Contractor's Contract Area to facilitate the conveyance of Inspectors and representatives of Sponsoring States parties, where appropriate and to keep the Chief Inspector informed if there is a change to proposed ship schedules due to operational, logistical or unforeseen circumstances;

(a) ter. Within seven business days of the Chief Inspector informing the Contractor that the Inspector(s) would like to conduct an inspection of a Contractor's ship or Installation, the Contractor shall inform the Chief Inspector of the next date a ship will commence its voyage to the Contractor's Contract Area.

(b) Cooperate with and assist in the inspection of any ship or Installation or equipment used to carry out Exploitation activities and activities related to such activities in the Area conducted pursuant to this regulation and comply with the requests of an Inspector;

(b) bis. Provide reasonable facilities, financed by the Contractor, including, where appropriate, food and where feasible accommodation, to Inspectors;

(c) Provide access to all relevant areas, items and personnel on ships and Installations used to carry out Exploitation activities related to such exploitation activities in the Area at all reasonable times.

(d) Provide access to relevant monitoring and surveillance systems and equipment, books, documents, papers and records to determine compliance with terms and conditions of a 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 in a uniform manner and as required by the Council or the Compliance Committee;

(f)bis Facilitate the activities of Inspectors to observe the Contractor's monitoring operations.

Regulation 96 quarter

Request for inspection in the event of Harm to the Marine Environment

1. In the event of Harm to the Marine Environment and the livelihood of any coastal community, adjacent coastal States which have grounds for believing such harm is caused by activities in the Area, shall notify the Secretary-General in writing through appropriate channels of the grounds upon which such belief is based and request an inspection.

2. The Secretary-General, upon the notification of a Member State, shall promptly initiate inspection, and invite representatives of coastal States to participate in the inspection, no later than 24 hours after such notification was made by the States to assess whether pollution the harm is attributable to activities in the Area.

Comments/remarks

General comments:

- Considering the replacement and redrafting of this provision, I have for the sake of clarity put the new draft regulation 96 (in its entirety) in a clean version.
- Important discussions have been carried out in the group in respect of identifying the most appropriate inspection mechanism, cf. article 162(2)(z) of the Convention. Several participants asked for a streamlined version of draft regulation 96, since it contained a great number of contradictions. Many participants suggested to continue the negotiations based on the proposed hybrid model (the "LTCCC"), since it seems to reflect a compromise between different views and had implemented many of the core elements identified by the working group. Consequently, I have updated draft regulation 96 and based it on the hybrid model. I have implemented the elements from the original draft regulation 96 that there seemed to be consensus around, but I am also aware that I have not been able to accommodate for all views. I invite for discussions and suggest focussing on how this basis can be used and if there are any concerns, concrete proposals should be put forward as to how the concerns can be accommodated for.

- In respect of the choice of the hybrid model, I think it is important to recall the roles assigned to the different organs in the Convention. I would like to highlight, that in the hybrid model, the inspectors will carry out the day-to-day work. The Chief Inspector will be in charge of the unit and the roster. The Compliance Committee will report, review and provide recommendations to the Council and this is in line with the functions assigned to the Commission in the Convention. The decision-making power remain and fully rest with the Council. So, I believe this hybrid model could work within the framework set out by the Convention. If we would like to consider moving this model in another direction, and e.g. establish a completely separate body, we would have to consider how to do this, since we need a solution on how it would be established, rules of procedure, membership etc.

Specific comments on draft regulation 96:

- In respect of the competencies required of the Chief Inspector, I have noted that the Chief Inspector should possess appropriate experience in compliance assurance, and health, safety and environment in marine mining or other related marine extractive industries. I suggest to regulated this further in the relevant Standard.
- In draft regulation 96, para 3, a participant has suggested to replace the Chief Inspector with a Standing Committee. Entailing that the Compliance Committee shall establish a Standing Committee, composed of the Chair of Commission and/or the Chair of the Compliance Committee and some individual members from the Compliance Committee. I invite for discussions of this proposal.

Specific comments on draft regulation 96 bis:

- In draft regulation 96 bis, para 1, one participant has suggested to let the Compliance Committee consist of fifteen members and that the regional groups shall designate two members from among Council members who shall serve for a period of two years, with the possibility of extension. Furthermore, that the remaining five members shall be designated by the Commission taking into account geographic representation. I have also received a proposal for the allowance of a number of individual professionals with the needed competencies to be included in the Compliance Committee. I invite for discussion of these proposals.

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 for Inspectors to be included in the Roster of Inspectors appropriate to the areas of duty of an Inspector under this Part.

1 bis. States Parties may, subject to the requirements of this regulation, nominate Inspectors for consideration, and individual applications may be

submitted directly for inclusion in the Roster of Inspectors. Nominees [and applicants] will be considered against the qualification and experience requirements. Equitable geographical representation and gender balance will also be considered, in line with the Convention principle. Subject to considerations of protection of personal data, the roster of Inspectors shall be made publicly available on the Authority's website.

2. The Compliance Committee shall make recommendations₂ to the Council on the appointment, supervision and direction of Inspectors included in the Roster of Inspectors, and on an inspection programme and schedule for the Authority in accordance with any applicable Standards and taking into account any applicable Guidelines.

3. The inspection programme shall be [overseen]~~managed~~ by the Council and [managed] ~~administrated~~ by the Compliance Committee, [and implemented by the Chief Inspector and the Inspectors].

4. The Inspectors shall be independent in the fulfilment of their tasks and [be guided by transparency, accountability and non-discrimination]

5. The Authority will cooperate with the Sponsoring State or State to ensure that inspections performed by Inspectors are aligned with enforcement at the national level. Inspectors shall report to the Compliance Committee in writing regarding any difficulties relating to the enforcement of the measures.

6. Inspectors may be required to undertake relevant training programmes, [including but not limited to project and ship instructions, health and safety, as well as undergo fit for work medical evaluations], at the request of the Council, based on the recommendations of the Compliance Committee. The Secretariat shall facilitate the requisite trainings and evaluations.

7. The Compliance Committee shall keep the Roster of Inspectors under review and updated. The Council may, for reasonable cause, remove an Inspector from the Roster of Inspectors, on the basis of the recommendations of the Compliance Committee.

Comments/remarks

- In respect of 97, para 1 (bis) it should be considered whether only state parties may nominate inspectors or whether a person can apply independently and irrespective of a state party nomination. Currently, the provision is unclear in this respect. I invite for discussions of this matter.
- The reference to transparency and accountability in para 4 has been moved from para 96 to this draft regulation. A participant also proposed to reference non-discrimination, which I have also inserted. I have refrained from referencing the precautionary approach, as I believe that the inspectors must determine objectively that a contractor is in compliance with the terms of the contract. This is also in line with several proposals for the suggested deletion.

Regulation 97 bis

Inspector's functions and liabilities

1. [In conducting the inspections, the] Inspectors shall:

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

(b) ~~Avoid Refrain from any undue~~ interference with the safe and normal operations of the Contractor and of vesselships 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. Comply ~~with to the~~ Authority's code of conduct for inspectors and inspections established pursuant to draft regulations 96 ~~(34) bis~~.

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

2. The Compliance Committee, upon the notification of any Member State on reasonable grounds that an inspection is expedient to prevent Contractor non-compliance or harm to the Marine Environment, shall promptly initiate inspection.

3. 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.

Comments/remarks

- I have suggested to insert a new section that specifically deals with the inspector's functions and liabilities as, to my understanding, these elements do not strictly fit into either draft regulations 96, 97 or 98.
- Para 2 is a consolidation of paras 7 and 8 of the original draft regulation 96.
- Para 3 stems from draft regulation 98 and is to be considered a replacement. Several participants supported to have a strict liability clause but suggested that it was moved from regulation 98 as that draft regulation relates to the inspector's powers.

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 [relevant] 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 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, all other recorded data and samples and any ~~vessel ship~~ or Installation used [to carry out Exploitation activities and activities related to such exploitation activities in the Area] ~~[in connection with activities in the Area]~~ including its log, equipment, records and facilities and question relevant personnel.

(c) [Request] ~~Require~~ from any person referred to in subparagraph (b) above [reason for]~~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;

[(f) [After due notification to the Authority giving reasons for the same. s]Seize document[s], article[s], substance or any part or sample of such for examination or analysis that the Inspector may reasonably require;]

[(g) Remove representative samples or copies of assays of such samples from any ~~vessel ship~~ or equipment used for or in connection with the Exploitation activities that the Inspector may reasonably require;]

(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,

[(h).bis. [Issue a]A "do not disturb notice", in writing, in order to allow the further inspection, examination or measurement of, or the conducting of tests concerning, any ~~vessel ship~~, installation, equipment or facilities used [to carry out Exploitation activities and activities related to such exploitation] ~~[in connection with]~~ activities in the Area.]

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

[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.

Comments/remarks

- Paras 1(f) and (g) and paras 3 and 4 of draft regulation 98 remains in brackets as there are divergent views as to whether the inspectors subject to the Convention has the power to seize documents.
- Para 1(h). bis is retained in brackets as some participants are of the view that the regulation should be deleted. I invite for discussions of that.

Regulation 99 Inspectors' power to issue instructions

1. If, as a result of an inspection, an Inspector has reasonable grounds to determine ~~[or anticipates]~~ that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of ~~[Serious]~~ H[h]arm to the Marine Environment, ~~[including Underwater Cultural Heritage [or a Contractor is otherwise in breach of the terms of its contract with the Authority]]~~ the Inspector shall give an instruction of a temporary nature considered reasonably necessary to remedy the situation, in accordance with any applicable Standards, including:

(a) A [written] instruction requiring a Contractor to undertake specific tests or monitoring and to furnish the Chief Inspector with the results or report of such tests or monitoring within a set period;

(b) A [written] instruction placing 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) 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 [written] instruction requiring a suspension in some or all [exploitation] activities for a specific period, [upon written authorization from the Council, as its representative].]~~

~~[(e) A [written] instruction prohibiting the Contractor from continuing or undertaking activities [for a specified period].]~~

1.bis The instruction will have immediate effect.

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~~ ship or Installation to whom the instruction can be issued.

2. bis. [The Inspector shall notify the Chief Inspector immediately when an instruction has been issued under paragraph 1]. The Chief Inspector shall [then] report immediately [and provide a copy of the instruction] to the Compliance Committee, the Secretary-General and through the Secretary-General to the Contractor's sponsoring State or States and, if applicable to the relevant [adjacent] coastal State or States, that an instruction has been issued under paragraph 1.

~~2. ter. An instruction shall be for a specified period not exceeding seven days. The Chief Inspector may extend such period by an additional seven days and shall report any such extension to the Compliance Committee.~~

2. 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 period.

2. sexies. The Compliance Committee may:

____(a) Request the [Chief] Inspector to provide further information as to the facts and circumstances giving rise to the issue of an instruction under paragraph 1 for its consideration; or

____(b) revise or set aside an instruction under paragraph 1 as soon as practicable; or

____(c) Invite the Council’s attention to any cases of non-compliance with the terms of a contract.

3. An instruction shall be for a specified period not exceeding seven days. The Chief Inspector may extend such period [by an additional seven days]/[until such time the Contractor has complied with the instruction and fulfilled all requirements], and shall report any such extension to the Compliance Committee.

3.bis An instruction is effective from the time fixed by the Inspector and remains in force unless set aside by the Compliance Committee 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.ter Within three days of the expiry of the specified period or any extension thereto under paragraph 3, the Chief-Inspector shall assess whether the instruction has been complied with by the Contractor and shall report immediately to the Compliance Committee. Subject to paragraph 3-~~bis~~, where a Contractor has failed to comply with a written instruction or the circumstances giving rise to the instruction remain unresolved, the Compliance Committee may thereafter exercise the powers conferred upon it under regulation 103.

3.quarter In the case of a written instruction issued under paragraph 1(d), where the circumstances giving rise to a suspension in some or all exploitation activities are not resolved or are unlikely to be resolved, the Compliance Committee shall [following consultation with the Contractot, notify the Council immediately together with any recommendation as to whether such suspension should continue. [Following consultations with the Contractor], ~~t~~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] [Committee].

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

Comments/remarks

- Several participants supported the deletion of “serious” in para 1. Some participants suggested to retain the reference to written, and I have thus kept this reference in brackets.
- In para 1, some participants suggested to delete the reference to Underwater Cultural Heritage as it is not related to the inspection mechanism of the Authority, I invite for discussion on this.
- Several participants pointed out that there was a need for streamlining para 3 and eliminated the duplications. I have tried to do so and have also implemented 2.ter in the streamlined version of para 3. Considering the replacement and deletions, I have for the sake of clarity put the new para 3 in a clean version. I invite for discussions of this new para 3 and in particular whether the extension should be for another 7 days or open as it is currently drafted.
- I understood from the meeting in July that there was consensus to continue the negotiations based on the alternative version of para 3. In that regard, I have attempted

to streamline the para, in particular in relation to 3.alt.bis and 3.alt.quater where there was a degree of overlap.

Regulation 100

Inspection Reports

1. No later than thirty days after the end of an inspection, the Inspector shall prepare and deliver a report to the Chief Inspector in accordance with the template and other requirements of the relevant Standards and in accordance with relevant Guideline setting out the findings and any recommendations for improvements in performance, procedures or practices by a Contractor. The Chief Inspector shall send the report to the Compliance Committee and the Secretary General, [who shall send a copy of the report to the Contractor and its sponsoring State or States]. ~~[The Compliance Committee shall ask the Secretary General to send a copy of the report to any relevant coastal State or flag State, the Contractor and sponsoring State or States and, if appropriate, the relevant adjacent coastal State or States and the flag State and to publish a copy of the report in the Seabed Mining Register, excluding confidential information.]~~

1 bis. The Contractor and the sponsoring State or States may within thirty days of the date of receipt of the Inspector's report, provide to the Secretary-General comments on the findings and recommendations, [including details of any action taken or to be taken in accordance with the findings and recommendations of the Inspector's report.] The Secretary-General shall transmit any comments to the Compliance Committee.

2. The Compliance Committee shall pursuant to regulation [96 bis paragraph 6], in their its annual report 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 and shall make any recommendations to the Council on any 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 may request the Legal and Technical Commission to review the findings and recommendations of inspection reports and provide recommendations to the Council on regulatory improvements.~~

3. The Compliance Committee shall report to the Secretary-General any acts of violence, intimidation, or abuse against or the wilful obstruction or harassment by any person of an Inspector, or a representative of a sponsoring State, any other State Party, or other party concerned who accompanies the Inspector, as identified in regulation 96, in the course of their duty. The failure by a Contractor to comply with regulations 96 or 96 ter shall also be reported to the Secretary-General. Appropriate measures shall be taken in accordance with regulations 99 and 103 respectively.

3 bis. The Secretary-General shall report subject to regulation 100(3) such acts immediately to the sponsoring State or States and the flag State of any ~~vesselship~~ or Installation concerned, the national State of the Inspector for consideration of the institution of proceedings under national law.

Regulation 100bis:

Contractor compliance report

The ~~Compliance Committee~~ ~~Secretary General~~ shall prepare an annual compliance report for each Contractor, which shall be made available in draft form within thirty Days for comment to the Contractor and the Sponsoring State or States, before being reported to the Council and published in 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.~~

Comments/remarks

- The last sentence has been deleted since it overlaps with draft regulation 103, para 7. bis.

Regulation 101

Complaints relating to Inspections

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 to the Secretary-General, who will transmit the complaint promptly to the Compliance Committee who shall consider the complaint as soon as practicable.

1 bis. A person aggrieved by an action of an inspector under this Part may complain in writing to the Compliance Committee, who shall report to the Commission to consider the complaint as soon as practicable.

2. The Compliance Committee may take such reasonable action as is necessary in response to the complaint, in accordance with applicable ~~S~~standards and ~~the Authority's~~ Code of Conduct.

3. The Compliance Committee shall ~~issue~~ ~~[submit]~~ a report to the Council describing the complaint and the action taken in response to such a complaint.

~~Regulation 101bis~~

~~Whistle blowing procedures~~

~~1. The [Compliance Committee] shall develop and implement:~~

~~— a. — whistle blowing policy for the staff of the Authority, the Inspectorate, the Enterprise, and personnel of Contractors, and~~

~~— b. a public complaints procedure to facilitate reporting to the Authority by any person of any concerns about the activities of a Contractor, or the Authority.~~

~~2. The whistle-blowing and complaints procedures under this Regulation must:~~

~~— a. be publicly advertised,~~

~~— b. be easy to access and navigate,~~

~~— c. enable anonymous reporting,~~

~~— d. trigger investigations of reports by independent persons, and~~

~~— e. be proactively communicated by the Secretary General to Contractors and their staff, and other Stakeholders.~~

~~3. A Contractor, [its subcontractors and their agents] shall have in operation whistle blowing and complaints procedures, which must be publicly advertised, and which should include details of the Authority's equivalent procedures to enable direct reporting to the Authority by a complainant where preferable.]~~

Comments/remarks

- I have suggested to delete the whistle blowing procedures from this part of the draft regulations, as I understand that most participants agreed that this would not be an appropriate placement. Also, as far as I understand, the Council can only require contractors to have a whistle blowing policy, rather than specifying what that policy should contain.

Section 2

Monitoring

Regulation 102

Ship~~Vessel~~ notification, electronic monitoring and data reporting

2. All installations, ~~vessel~~ships and mining collectors involved in exploitation activities under the Exploitation contract shall be fitted with:

(a) an electronic monitoring system which shall record, where technically feasible in real time, inter alia, the date, time and position of all mining activities, and environmental data, [including Underwater Cultural Heritage]; and

(b) The electronic monitoring system shall also encompass the monitoring of the environment, implementing the obligations under Regulation [46ter], allowing for adaptive management during the mining operation.

(c) a satellite tracking system to enable identification of each ~~ship~~vessel and determination of its position, navigation status, course and speed. 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 techniques to monitor in real-time, [where practicable] and in the actual environment the mining impact, ~~including the removal of mineral resources, plume dispersal, chemical emissions, introduction of pollutants including light and sound,~~ [The electronic monitoring system shall be in accordance with the Environmental Monitoring and Management Plan.

~~[2 ter. The electronic monitoring system [should][shall] 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 46, [allowing for adaptive management during the mining operation].~~

3. The Compliance Committee shall notify the [Contractor and the] sponsoring State or States and shall issue a compliance notice under regulation 103, 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 Environmental Monitoring and Management 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 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 received and transmitted to the Authority under this regulation shall be transmitted to the sponsoring State or States ~~[and non-confidential data be made publicly available in real time on the Authority's website].~~

Comments/remarks

- I have attempted to consolidate paras 2 bis and 2 ter.
- I suggest deleting para 3. bis since this will be covered by Annex VII (EMMP).
- Para 4 is already covered in draft regulation 96 ter, para 5(d) and thus deleted.
- Several participants have suggested to delete the last sentence from para 5.

Section 3 Enforcement and penalties

Regulation 103

Compliance notice, suspension, and termination of exploitation contract

1. At any time, if it appears to the Compliance Committee based on reasonable grounds, including a report from an Inspector, or failure to comply with a written instruction under regulation 99, that a Contractor is in breach of, ~~or is at risk of breaching~~, the terms and conditions of its exploitation contract, provisions of the Convention related to activities in the Area, the Agreement or the rules, regulations and procedures of the Authority, the Compliance Committee shall issue a compliance notice to the Contractor requiring such action as may be specified in the compliance notice and shall report immediately to the Council on the issue of such notice. ~~to:~~

~~[(i) seek dialogue with the Contractor to discuss and attempt to resolve the issue];~~

~~(ii) issue written warnings, including warnings in relation to possible action the Authority may take in the event of failure to act or future breaches;~~

~~(iii) 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;~~

~~(iv) agree with the Contractor a modification to the Plan of Work, in accordance with regulation 57; or~~

~~(v) 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.bis.Alt. The Authority should discuss the issue in detail with the Contractor to inform decisions of the Council.]

~~[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(iv).]~~

2. ~~[A compliance notice may be issued only in case of breach of the terms and conditions of its exploitation contract, Part XI and provisions of the Convention related activities in the Area, the rules, regulations and procedures of the Authority, or these regulations].~~ A compliance notice shall:

(a) Describe the ~~[alleged]~~ breach and the factual basis for it; and

(b) Require the Contractor to take remedial or corrective action or other such steps as the Compliance Committee considers appropriate to ensure compliance within a specified time period and may include:

(i) the implementation of an improvement plan setting out 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; or

(ii) agreeing with the Contractor a modification to the Plan of Work in accordance with regulation 57.

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

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

4. The Contractor shall be given a reasonable opportunity not exceeding 30 days to make representations in writing to the Secretary General concerning any aspect of the compliance notice, who shall transmit same to the Compliance Committee. Having considered the representations, the Compliance Committee may make recommendations to the Council to confirm, modify or withdraw the compliance notice.

5. If a Contractor, in spite of one or more 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 violations of the fundamental terms of the exploitation contract, provisions of the Convention related activity in the Area, the Agreement or the rules, regulations and procedures of the Authority, the Council shall 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 shall make public any compliance notice issued to a Contractor, as well as any response received from the Contractor [and Sponsoring State], subject to the confidentiality obligations of Regulation 90, and shall present an annual report to the Council summarizing any compliance notices the Authority has issued.~~

[5. Bis Alt 1 The Secretary-General shall, [subject to the confidentiality requirements of regulation 90] 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 ~~Compliance Committee Inspector General~~ shall [include] [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 shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention.

Comments/remarks

- Different views were provided during the July session, and I have attempted to accommodate for these views and in general streamline the provision.

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. The Council shall determine the nature of such works or measures and the manner in which they are to be carried out.

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

**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.

Section 4

Periodic review of inspection mechanism

Regulation 105 bis

Periodic review of inspection mechanism

1. Every 5 years from the date of establishing the Compliance Committee, the Council shall commission through the Secretary-General an independent review of the Authority's inspection, compliance and enforcement mechanism to ensure that the manner of its operation and activities accords to best international regulatory practice.

[1. bis. The report of the periodic review should be published on the Authority's website, with private and confidential information redacted.]

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 mechanism operates.