

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 31TH SESSION:
COUNCIL - PART I**

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(s) of Delegation(s) making the proposal:

Friends of the President

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

Draft Regulation 103 (Non-Compliance Notice, Suspension, and Termination of Exploitation Contract)

3. 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.

The previous version of the regulation is reflected below in **red** and is ~~struck~~.

A new DR 103, DR 103bis, DR 103ter and DR 103quat replace the previous version and are reflect in clean text below the previous version.

~~Regulation 103~~

~~Non-compliance Notice, Suspension, and Termination of Exploitation Contract~~

~~1. At any time, if it appears to the Compliance Committee based on reasonable grounds, which may include a report from an Inspector, or failure to comply with a written instruction under Regulation 99, that a Contractor is in breach of, 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 [necessary to remedy the breach] as may be specified in the Compliance Notice and shall report immediately to the Council on the issue of such notice. [The Compliance Committee shall, through the Secretary General provide a copy of the Compliance Notice to the Sponsoring State or States within 24 hours].~~

~~2. A Compliance Notice shall:~~

~~(a) Describe the 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 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 any such representations and taking account of any enforcement action taken or to be taken by the Sponsoring State or States, 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 has conducted its activities in such a way as to result in [serious, persistent and wilful] violations of the fundamental terms of the Exploitation Contract, provisions of Part XI of the Convention, the Agreement or the rules, regulations and procedures of the Authority, the Council [may] suspend or terminate the Exploitation Contract, pursuant to regulation 29 quater], by providing written notice of the suspension or termination to the Contractor [and notification of such suspension or termination to the sponsoring State or State in accordance with the terms of the Exploitation Contract.~~

~~[5. bis. The Secretary General shall, make public any Compliance Notice issued to a Contractor, any response received from the Contractor or Sponsoring State or States. The Compliance Committee shall include in their annual report to the Council a summary of any Compliance Notices 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 applicable 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.~~

Regulation 103

Compliance and enforcement measures by the Compliance Committee

1. If the Compliance Committee determines, based on evidence, that a Contractor is not complying with its Exploitation Contract, or is at risk of not doing so, it may (i) take measures directly and (ii) make recommendations to the Council to take measures, in order to secure compliance with the Exploitation Contract by the Contractor, in accordance with Regulations [103] through [104].

2. The Compliance Committee may, *inter alia*:

(a) inform a Contractor what action is needed to become or remain compliant with its Exploitation Contract;

(b) warn a Contractor that it is not compliant or at risk of being non-compliant with its Exploitation Contract;

(c) convene a meeting with the Compliance Committee for the Contractor to attend;

(d) instruct the Contractor to compile and implement an improvement plan setting out:

(i) actions to be taken to return to compliance with its Exploitation Contract;

(ii) how the actions' effectiveness will be monitored and reported;

(iii) the period of time within which such actions would ensure a return to compliance with its Exploitation Contract; and

(iv) subsequent steps which the Contractor proposes to alternatively take, should the actions under (i) be unsuccessful, or should non-compliance continue;

(e) issue written instructions to the Contractor to take particular actions, in order to return to compliance with its Exploitation Contract, including subsequent steps should non-compliance continue; or

(f) recommend that the [Roster of Inspectors/Chief Inspector] conducts more frequent inspections of the activities in the Area carried out by the Contractor.

3. The Compliance Committee may recommend to the Council, *inter alia*, that the Council:

(a) requires a Contractor to pay monetary penalties, such as penalty payments or fines;

(b) [issues emergency orders;] or

(c) suspends or terminates a Contractor's rights under an Exploitation Contract, if:

(i) in spite of warnings by the Authority, the Contractor has conducted its activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the Exploitation Contract, Part XI and the rules, regulations and procedures of the Authority; or

(ii) the Contractor has failed to comply with a final binding decision of the dispute settlement body applicable to it.

4. When taking or recommending measures under this Regulation, the Compliance Committee may:

- (a) provide that the Contractor is obliged to ensure it complies with the Exploitation Contract within a specified time limit;
- (b) prescribe that the measures are conditional;
- (c) prescribe anticipatory measures which are to become effective if the Compliance Committee finds that the Contractor has breached the Exploitation Contract a second time and has communicated such finding to the Contractor; and
- (d) adopt a combination of measures.

5. Where a Contractor does not comply with one or more terms or conditions of the Exploitation Contract, measures may be imposed for each respective breach of the relevant term or condition.

6. The procedures through which the measures in paragraphs 2, 3 and 4 are to be taken or recommended, are further set out in a Standard, which shall be applied by the Compliance Committee.

7. The Compliance Committee may, for the purposes of any finding under paragraph 1 that the Contractor is not complying with its Exploitation Contract or is at risk of not doing so, request the Contractor through the Secretary-General to provide any relevant documents or other information and invite the Contractor to make any representations for consideration by the Compliance Committee.

8. The Compliance Committee may take measures by issuing a Non-Compliance Notice or otherwise. When making a recommendation to the Council, the Compliance Committee shall also issue a Non-Compliance Notice.

Regulation 103bis

Non-Compliance Notices

1. A Non-Compliance Notice shall:

- (a) describe the non-compliance, or risk of such, and the factual basis for it;
- (b) describe the place and time that the non-compliance, or risk of such, was observed;
- (c) mention the relevant obligation or obligations, including the legal basis;
- (d) describe the measure or measures imposed by the Compliance Committee;
- (e) contain the reasons why the imposed measure or measures are deemed necessary and appropriate; and
- (f) in the event a timeframe is imposed within which the Contractor must implement the measure or measures, specify such timeframe.

2. For the purposes of Article 18 of Annex III to the Convention, a Non-Compliance Notice issued under this Regulation constitutes a warning by the Authority.

3. A Non-Compliance Notice shall immediately be communicated by the Secretary-General to the Contractor in writing upon the instruction of the Compliance Committee. A Non-Compliance Notice shall, through the

Secretary-General, be provided to the Sponsoring State or States immediately after it is communicated to the Contractor.

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 Non-Compliance Notice, who shall transmit the received information to the Compliance Committee without undue delay. Having considered any such representations and taking account of any enforcement action taken or to be taken by the Sponsoring State or States, the Compliance Committee may make recommendations to the Council to confirm, modify or withdraw the Non-Compliance Notice.

Regulation 103ter

Proportionate measures commensurate to non-compliance

1. The Compliance Committee shall determine the extent and nature of the non-compliance with an Exploitation Contract, or risk thereof, by a Contractor, by assessing the consequences or possible consequences of the non-compliance and the conduct of the Contractor in relation to the non-compliance, in accordance with the applicable Standard.

2. The Compliance Committee shall take proportionate measures that are commensurate to the extent and nature of the non-compliance of the Exploitation Contract or risk thereof, as well as the circumstances of the non-compliance or risk thereof. Relevant to determining the proportionality of a measure are (a) the severity and frequency of the non-compliance or risk thereof and (b) the Contractor's conduct in relation to the non-compliance or risk thereof.

3. In determining the severity of the non-compliance or risk thereof, the Compliance Committee shall take, *inter alia*, the following circumstances into account, whether:

- (a) the Contractor gained a financial advantage by the breach;
- (b) the Contractor concealed relevant facts, provided information that is false or misleading, committed forgery of documents, engaging in corruption;
- (c) Inspectors have been hindered in the exercise of their duties; or
- (d) human life has been endangered;
- (e) the Contractor could foresee that its non-compliance could result in serious harm to the marine environment;
- (f) imposing a financial penalty on the Contractor will likely not cause the Contractor to comply with the Exploitation Contract;
- (g) the Compliance Committee considers there is a need to deter further non-compliance by the Contractor in the specific circumstances;
- (h) the Contractor notified the Inspectors or the Compliance Committee directly about the circumstances leading to the non-compliance or the non-compliance itself, as well as the risk thereof;
- (i) the Contractor's failure to comply with the Exploitation Contract was caused by a force majeure;
- (j) the breach occurred in the context of a change to the Authority's rules, regulations or procedures, and the Contractor is demonstrably taking reasonable steps, within a reasonable period, to bring its operations into conformity with the new requirements.

(k) the Contractor took immediate steps to remedy the breach and prevent recurrence; or

(l) the Contractor fully cooperated with and facilitated the Authority's inspections.

4. In its determination of which measures to prescribe, the Compliance Committee will apply the applicable Standard.

Regulation 103quat

Specific procedures through the Council in relation to enforcement

1. The Compliance Committee shall submit cases of non-compliance with the Exploitation Contract to the Council [through an annual report]. The Council shall invite the attention of the Assembly to such cases of non-compliance, in accordance with Article 162(2)(a) of the Convention.

2. 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.

[3. The Council may institute proceedings against a non-compliant Contractor before the Seabed Disputes Chamber on behalf of the Authority. The Commission may recommend to the Council that such proceedings be instituted on behalf of the Authority before the Seabed Disputes Chamber. The Compliance Committee may provide any and all assistance to the Commission and Council with respect to such proceedings before the Seabed Disputes Chamber.]

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

This textual proposal reflects the interim outcome of a Friends of the President initiative. The outcome remains subject to further discussions within the Friends of the President group.