Assuring Environmental Compliance in Deep-sea Mining

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Environmental Compliance Assurance: Key Factors and Underpinnings

Usually regarded as being made up of three linked factors:

- Compliance Promotion
- Compliance Monitoring
- Compliance Enforcement

These factors are underpinned by:

- Institutional Framework
- Public Reporting/Accountability/Transparency
- Assessing Effectiveness
Methodology

Case Studies:
- National environmental and natural resource protection agencies
  - South Africa (Department of Environmental Affairs),
  - New Zealand (Environmental Protection Authority),
  - Hong Kong (Environmental Protection Department),
  - Pacific Islands region (Parties to the Nauru Agreement) and
  - UK (Marine Management Organisation)
- Private sector companies
  BP, Chevron, Shell and Rio Tinto
- International finance
  European Bank for Reconstruction and Development

Roundtable:
- The Case Studies Report circulated to a group of experts
- Representatives from industry, regulators, compliance organisations, international finance,
- Discussion agenda based on six compliance themes
- Recommendations also made on
  - regulations and standards
  - EIAs, EMMPs and the approval process
  - assessing Contractor environmental management capacity
  - strategic public consultation
Components of environmental compliance assurance

- Compliance Promotion
- Compliance Monitoring
- Compliance Enforcement
- Institutional Framework
- Public Reporting/Accountability/Transparency
- Assessing Effectiveness
Institutional Frameworks: Key Learnings

Good practice includes:

- Clear delineation of accountability/responsibility
- Full time compliance assurance staff
- Strategic planning
- Independence
Institutional Frameworks: Selected Recommendations

- Ring-fence environmental compliance assurance from other functions.
- Mandate more environmental specialists in the LTC or establish a separate Environment Commission.
- Establish an Environment Department within the ISA Secretariat that reports via the Secretary-General to the ISA Council.
- Establish an Office of Environmental Compliance staffed by suitably qualified professionals.
Components of environmental compliance assurance

- Compliance Promotion
- Compliance Monitoring
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- Assessing Effectiveness
Compliance Promotion: Key Learnings

Good practice includes:

- Multi-pronged, proactive approach (e.g., outreach, incentives, guidance)
- Use of web-based and interactive materials
- Industry association
- Development of evidence base
Compliance Promotion: Selected Recommendations

- Establish an industry association to promote model codes of conduct and practice
- Publish guidance on the full suite of environmental obligations and expected management approaches
- Maintain an environmental compliance assistance service
- Build an evidence base in collaboration with Contractors (of the impacts of mining and workable mitigation solutions)
- Conduct reviews of exploration Contractors compliance records
- Run an awards programme
Components of environmental compliance assurance

- Compliance Promotion
- Compliance Monitoring
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Compliance Monitoring: Key Learnings

Good practice includes:

- Clear monitoring framework
- Combine data and audits
- Independent verification
- Self-reporting and regulator review through dedicated portals
- Risk-based approach
- Connection to evidence base
Compliance Monitoring: Selected Recommendations

- Ensure fairness and consistency regardless of regulated party
- Establish and test provisional practices during a pioneer phase
- Ensure real-time data reporting, use of ‘portal’ and provision of access to internet from remote locations
- Establish frequency and intensity of environmental audits and inspections based on individualized risk assessments
- Include periodic reviews of long-term/cumulative effects in self-reporting
- Monitor data to feed into evidence base
Components of environmental compliance assurance

- Compliance Promotion
- Compliance Monitoring
- Compliance Enforcement

- Institutional Framework
- Public Reporting/Accountability/Transparency
- Assessing Effectiveness
Compliance Enforcement: Key Learnings

Good practice includes

- Progressive escalation
- Initial emphasis on conformance over penalties
- Develop contractor relationships to foster understanding
- Use of environmental improvement plans
Compliance Enforcement: Selected Recommendations

- Develop Compliance Enforcement Strategy to include triggers for early dialogue and actions before formally issuing compliance notices
- If a notice is issued, ISA and Contractor to agree on an Environmental Improvement Plan
- Failure to comply with the Plan would lead to escalation of enforcement actions
- Sponsoring States and Flag States should be encouraged to operate their own Compliance Enforcement Strategies
- Publish an indicative range of monetary penalties set sufficiently high as to act as meaningful deterrents
- Criminal prosecution should be regarded as an enforcement measure of last resort, Sponsoring States to identify the sanctions appropriate within their domestic legal regimes
Accountability & Transparency: Key Learnings

Good practice includes

- Public access to all relevant information in timely fashion
- Whistle-blowing procedures
- Sustainability reporting (including years ahead and previous targets)
- Independent verification
Accountability & Transparency: Selected Recommendations

- Full disclosure of all EIA and EMMP related documentation with adequate time and procedures for considering public views
- ‘Decision Report’ on applications to be issued showing how public input has been considered
- Publicise compliance records of all Contractors
- Public access to environmental information via DeepData
- Whistle blowing policy for ISA staff, Contractors and mechanisms for public complaint that assure confidentiality
Components of environmental compliance assurance

1. Compliance Promotion
2. Compliance Monitoring
3. Compliance Enforcement
4. Institutional Framework
5. Public Reporting/Accountability/Transparency
6. Assessing Effectiveness
Assessing Effectiveness: Key Learnings

Good practice includes

- Internal assessments against published targets
- Tracking effectiveness on ongoing basis
- External scrutiny of private companies as part of annual verification
- Regulators scrutinised by other agencies
Assessing Effectiveness: Selected Recommendations

- Undertake transparent and consultative annual compliance assessment against targets and a Strategic Plan, including a parallel assessment from an external source.
- Solicit views on compliance performance by surveys of the general public, stakeholders, Contractors and Sponsoring States.
- Present outcomes to the ISA Council and make available to the public.
- Consider the adoption of a “live touch dashboard” approach for the first five years of establishing compliance assurance practices.
- Establish ISA Ombudsman for independent accountability.
Key Messages: What is Needed

- An organisational structure within which environment functions are ring-fenced from and uninfluenced by other ISA functions
- Timely appointment of full-time suitably qualified staff with clear Rs & Rs
- Adequate funding to support all aspects of compliance assurance (not only inspection and enforcement)
- Adoption of a strategic planning and risk-based approach to implementing compliance actions
- Planning of compliance actions and decision-making supported by a strong evidence-base
- A proactive approach with Contractors to minimise the need for enforcement actions
- Transparency with the public and mechanisms for accountability to stakeholders
Possible Structure for the ISA with an Independent Environment Department Reporting to the Secretary-General

The **Assembly**, governing body of the **ISA**

- **The Council**, the executive body of the ISA
- **Legal and Technical Commission**, a body of experts
- **Environment Commission**

- **The Secretary-General**, the chief administrative officer of the ISA
- **Economic Planning Commission**

**The Secretariat**

- **Non-environmental Secretariat functions**

- **Environment Department** of permanent full-time staff and a departmental head reporting to the Secretary-General
  - **Strategic Policy and Planning Team**
  - **Consents Team**
  - **Compliance Assurance Team**
  - **Evidence Team** providing the evidence, data and technical advice that are required by the ISA operational functions and the LTC (or Environment Commission)