

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

Informal Working Group – Inspection, Compliance and Enforcement

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@isa.org.jm.

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

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Facilitator's comments on Regulation 96, specifically the establishment of a Compliance Committee.

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.

[no amendment to proposed text as the existing text does not create a Compliance Committee]

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

- We do not support the creation of a Compliance Committee for inspection, compliance, and enforcement as a subsidiary organ of the Authority.
- The Convention directs that a "*staff of inspectors*" shall inspect activities in the Area (see Article 162(2)(z)).
- We consider it adequate that Inspectors will report to the Secretary-General and that the Secretary-General maintains responsibility for inspections and the issuance of compliance and enforcement notices.
- We note that the Convention is clear on the organs and sub organs that have been agreed to be created under Part XI of the Convention.

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Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 96(1bis)

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.

1.bis The ~~Secretary General Council~~ shall approve and maintain a code of conduct for Inspectors and inspections, that takes into account the principles in paragraph (1) and includes provisions on identifying and managing conflicts of interest, and on information management and confidentiality.

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

- We do not consider it is necessary for the Council to approve and maintain a Code of Conduct for Inspectors.
- We understand that it is intended that Inspectors will fall under a Directorate within the Secretariat or alternatively report to the Secretary-General. Therefore, it would be appropriate for any code of conduct for Inspectors and inspections to be developed and updated by the Secretary-General.

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

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 96(2)

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 Contractor shall permit the Authority to send its Inspectors, who ~~[may][shall upon request by sponsoring States or other party concerned]~~ be accompanied by a representative of ~~the~~its sponsoring State ~~or other party concerned~~, 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, Members of the Authority, in particular the sponsoring State or States, shall assist the Council, the Secretary-General and Inspectors in discharging their functions under the Rules of the Authority

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

- We are concerned with the uncertainty and ambiguity of who might be regarded as any "other party concerned".
- We understand the amendment to Draft Regulation 96(2) if the other party concerned is intended to be a State party to the Convention that has justifiable reasons for wishing to send a representative to inspect. However, we do not support the inclusion of language that would facilitate an Observer or any general organization with an interest in the Activities in the Area to send a representative for inspection.
- We consider that it is the primary role of the Inspector and the Sponsoring State to inspect and ensure compliance.

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Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 96(3)

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 ~~{Secretary-General}~~ **[The Inspector]** shall give reasonable notice to the Contractor of the projected time and duration of inspections **for a period as necessary**, 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-General}~~ **[the Inspector]** has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the ~~{Secretary-General}~~ **[the Inspector]** may, where practicable, exercise the right to conduct an inspection without prior notification, **[pursuant to Regulation 4(5)]**.

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

- We support the inclusion of the Inspector in Draft Regulation 96(3).
- We consider that practically, and considering the roles and responsibilities of the Secretary-General, the Inspector is the correct role to give reasonable notice under Draft Regulation 96(3), rather than the Secretary-General.
- The Secretary-General should be kept to perform the internal review function of any actions or decisions taken by the Inspectors.
- We consider that prior to any inspection that the Inspector must submit to the Contractor clear and detailed instructions providing a detailed plan of activities that the Inspector proposes to undertake during the inspection.
- We consider this critical to allow the Contractor to safely manage the Inspector during the inspection and facilitate the actions of the Inspectors in the performance of their duties (as required by Draft Regulation 96(5)).

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

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 96(4)

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.

Inspectors may inspect, until completion of the final Closure Plan, ~~[during the whole lifecycle of the activities in the Area]~~ any relevant documents, ~~or items, which are necessary to monitor the Contractor's compliance, all other recorded~~ data and or samples 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. Please indicate the rationale for the proposal. [150 word limit]

- We do not support the inclusion of the bracketed text [during the whole lifecycle of the activities in the Area]
- We consider that this bracketed text creates ambiguity and uncertainty as to what constitutes the whole lifecycle of the activities in the Area.
- We note that the Authority already has the right to inspect all installations in the Area used in connection with activities in the Area under UNCLOS (Article 153(5)).
- We consider that, if it is necessary to impose a temporal limitation on the Inspector's power to inspect, we suggest the following inclusion "Inspectors may inspect, until completion of the final Closure Plan, ...".
- We consider that this is an appropriate and accurate temporal limit, as until the final Closure Plan is complete there is likely to be ongoing monitoring obligations after the cessation of activities.
- We support the remaining proposed amendments to Draft Regulation 96(4).

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

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 96(5)(a)(bis)

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.

~~(a).bis Keep the Secretary General and sponsoring State or States notified of proposed vessel schedules including support and supply vessels, and inform the Secretary 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, where appropriate;~~

(a).bis Within seven days of the Secretary-General informing the Contractor that the Inspector(s) would like to conduct an inspection of a Contractor's vessel or Installation, the Contractor shall inform the Secretary-General of the next date a vessel will commence its voyage to the Contractor's Contract Area.

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

- We do not support the inclusion of Draft Regulation 96(5)(a)(bis).
- We consider that it is excessive and impractical to require a Contractor on an ongoing basis to inform the Secretary-General 30 Days before any vessel commences its voyage to the Contract Area.
- We note there is likely to be operational reasons whereby it will not be practical to give the Secretary-General 30 Days' notice of every vessel departure. For example, vessel departure dates may change due to weather conditions and other operation logistics.
- We understand the intent behind the proposed change and suggest alternative text that requires the Secretary-General to inform a Contractor when the Inspectorate

would like to conduct an inspection and the Contractor shall inform the Secretary-General of the next vessel leaving for the Contract Area.

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Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 96(5)(c)

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.

Provide access to all relevant areas, items and personnel ~~[in offices]~~ or on vessels and Installations at all reasonable times, ~~[including access to and use of communication equipment for the purpose of the transmission and receipt of messages];~~

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

- We do not support the inclusion of the bracketed text in Draft Regulation 96(5)(c), *[including access to and use of communication equipment for the purpose of the transmission and receipt of messages]*.
- We consider that the existing text of Draft Regulation 96(5)(c) is sufficient to create an obligation on contractor's to provide access to all relevant areas on vessels and Installations for the purposes of conducting the inspection.
- However, we consider that the proposed amendments in square brackets are aimed at a different purpose, being to oblige a contractor to give an Inspector(s) communication access to send and receive their own messages.
- We consider that this is not the appropriate clause for this proposal, as it is out of context with the existing text and purpose of Draft Regulation 96(5)(c)
- If there is a desire to include the requirement for Inspectors to be given access to communications technology we would suggest a new clause is added to 96(5), the following draft text could be considered: “Provide access to communications technology to enable required communications for the inspection.”

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Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 96(5)(f)

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.

~~Accept the deployment of remote real time monitoring and surveillance equipment, where required by the Secretary General, and facilitate the activities of Inspectors to observe in deploying such equipment and having access thereto~~ the Contractor's monitoring operations.

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

- We seek clarity as to what is intended by Draft Regulation 96(5)(f). For the reasons set out below, we have amended Draft Regulation 96(5)(f) to resolve the text we consider ambiguous.
- We consider that it is not clear whether it is intended that the Inspector will deploy their own equipment or whether it is intended that the Inspector will use the Contractor's surveillance equipment to conduct inspection activities.
- We consider that if an Inspector were to bring their own monitoring and surveillance equipment, it is not clear how this could be deployed safely and without hindering the Contractor's operations.
- We consider that if a Contractor's equipment is to be used, this will have an unacceptable interruption to operations and may impact existing monitoring operations.

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Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 97 Alt 1 (5)

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.

~~5. The Inspectors shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of Part XI of the Convention of the Convention, the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans approved under Regulation 15. Sponsoring States shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with Article 139 of the Convention.~~

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

- We do not support the inclusion of Draft Regulation 97 Alt 1 (5).
- Article 153(4) of the Convention provides

The Authority shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of this Part and the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans of work approved in accordance with paragraph 3.

- We consider that Draft Regulation 97 Alt 1 (5) is inconsistent with Article 153(4) of the Convention, and this "control" cannot be exercised and should not be delegated to Inspectors.
- We consider that if Draft Regulation 97 Alt 1 (5) were not to be removed, inconsistent and overlapping power would be created with Article 153(4) of the Convention.

- We consider that the final sentence in Draft Regulation 97(5) is duplicative of Article 153(4) of the Convention and is unnecessary.

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

Facilitator's Comments on Draft Regulation 97

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.

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

- We agree with the Facilitator's comments, specifically that the Council is not by the Convention required to perform the day-to-day functioning of the inspection mechanism.
- We consider that the Convention establishes this division of roles and responsibilities, pursuant to Article 163(2)(z) of the Convention.
- We also consider that it is for the Secretary-General as decision maker when it comes to inspection and compliance to maintain and oversee the day-to-day functioning of the inspection mechanism. This is consistent with the existing text of Draft Regulation 97(3).
- The Convention provides that the Secretary-General shall "*perform such other administrative functions as are entrusted to the Secretary-General*", Article 166(3) of the Convention.
- We consider that day-to-day functioning of the inspection mechanism, as outlined on Draft Regulation 97 falls within the division of responsibility allocated to the Secretary-General under the Convention.

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

Draft Reg. 98(5)

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.

An Inspector ~~may~~ [shall] document any site visit or inspection activity and ~~may shall use using~~ any reasonable means ~~to do so~~, including video, audio, photograph or other form of recording.

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

- We support the amendment in Draft Regulation 98(5) and believe that all Inspectors shall be required to document all inspection activities.
- We consider that this is an "appropriate" part of the mechanism by which the Inspectors will inspect activities in the Area, supported by Article 162(2)(z) of the Convention.
- We consider that given the power the Inspectors have been afforded in Part XI of the Draft Regulations, and in particular the current text of Draft Regulation 99, it is important that all inspections are well documented.
- The Inspectors are to report their findings to the Secretary-General, under Draft Regulation 100. We consider that the Inspectors' report should be accompanied by documentation of all inspection activities and any recommendation for administrative action is supported by adequate evidence.

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

Draft Reg. 98(6)

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.

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~~.

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

- We propose to amend Draft Regulation 98(6), as outlined above.
- The purpose of this amendment is to ensure that the obligations contained in the existing Draft Regulation 98(6) apply to *all* of the duties which the Inspector undertakes.
- We also note that pursuant to Draft Regulation 90(1), the Secretary-General is under an obligation to maintain the confidentiality of all Confidential Information, and shall "*establish procedures, consistent with the provisions of the Convention, governing the handling of Confidential Information by members of the Secretariat*".
- We consider that it is appropriate for the Inspector's to undertake such a confidentiality obligation, and that this obligation extends to all of their duties undertaken.

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Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 99(3)

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.

Any instruction issued under paragraph 1 above shall be in force for a specified period, not exceeding seven Days, after which it lapses. The Inspector shall report immediately to the Secretary-General and to the Contractor’s sponsoring State or States that an instruction has been issued under paragraph 1, and the Secretary-General may thereafter exercise the powers conferred upon the Secretary-General under regulation 103. ~~{The Secretary-General shall exercise these powers to prevent probable-imminent danger to the health or safety of any person or probable, imminent, and imminent serious harm to the environment arising out of activities in the Area}.~~

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

- We understand and agree with the intention behind the proposed bracketed text for Draft Regulation 99(3).
- However, we suggest for consistency with the Convention that:
 - the word "*probable*" be removed with respect to the health or safety of persons; and
 - the words "*probable*" be removed with respect to Serious Harm to the Marine Environment.
- With respect to serious harm to the marine environment, the power granted to the Council under UNCLOS Article 162(2)(w) is to "*prevent*" serious harm to the marine environment. The lower threshold proposed of "*probable, imminent*" is not consistent with Article 162(2)(w) of the Convention, and on this basis, we consider it should be removed.

- We have proposed to include "*arising out of activities in the Area*" in relation to serious harm to the environment, as this is consistent with Article 162(2)(w) of the Convention.
- With respect to the health or safety of persons, the word "*probable*" in Draft Regulation 99(3) is inconsistent with Draft Regulation 99(1), which states "*endangers or may endanger the health or safety of any person*". Further, in other articles of the Convention, including Article 242(2) the threshold adopted is "*to prevent and control damage to the health and safety of persons*". On this basis, we consider that the word "*probable*" in Draft Regulation 99(3) should be removed.

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Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Facilitator's comments on Draft Regulation 100

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.

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

- We support the Facilitator's comments concerning Draft Regulation 100.

Inspector Reports

- We agree with the Facilitator's comments that, 7 days "*might be too tight*" and we consider 7 days is not a reasonable amount of time for the Contractor to respond to the Inspector's report. We have proposed 30 Days as a reasonable amount of time for a Contractor to respond to an Inspector's report.

Confidential Information

- We support and understand the transparency which is sought from the suggestion to publish the Inspector's report on the Authority's homepage. However, we have concerns regarding Confidential Information and commercially sensitive information in such reports being made publicly available.
- As such, we consider that should a copy of the report be made public, that any Confidential Information or commercially sensitive information belonging to the Contractor be redacted.
- We also consider that the Contractor should be afforded an opportunity to review and comment on the redacted report prior to release to the public to ensure no inadvertent release of Confidential Information or commercially sensitive information.

- We consider that the proposal to redact the Inspector's report is consistent with other Draft Regulations where Contractor information will be made public, including Draft Regulation 17(3) and Draft Regulation 38(3), which each provide for redaction of Confidential Information.
- We also note that pursuant to Draft Regulation 90(1), the Secretary-General is under an obligation to maintain the confidentiality of all Confidential Information. Further, the Secretary-General shall not, except with the prior written consent of the Contractor, release such information (pursuant to Draft Regulation 90(4)).
- Therefore, we consider the most appropriate solution to publish the Inspector's report is to (i) redact Confidential Information and commercially sensitive information; and (ii) seek the Contractor's prior written consent prior to publication.

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Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 100(1.bis)

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.

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

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

- We support the inclusion of Draft Regulation 100(1.bis).
- We consider that 7 days is not a reasonably sufficient period of time for a Contractor to adequately consider and respond to an Inspector's report.
- We outline below some of the reasons why we believe 7 days is not a sufficient period of time.
 - An inspection may cover a wide range of matters with respect to vessels or an Installation (as outlined in Draft Regulation 96). As such, an Inspector's report may be lengthy and require considerable time for a Contractor to consider, undertake any follow-up investigation and formulate a response.
 - The contents of an Inspector's report, as outlined in Draft Regulation 100(1) is detailed. Contractors will require reasonable time to consider any findings or recommendations, how such findings or recommendations impact existing operations, and whether any additional expert or technical advice is required (and time to seek such advice if required).
 - We consider that a time period of 30 days for a Contractor to respond is reasonable and consistent with existing standard practice of the

Commission and Secretary-General, and is in aligned with Draft Regulation 103(4).

- On this basis, we have suggested that 30 days is more appropriate and is a reasonable period of time for a Contractor to provide a response.

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

Draft Reg. 100(1.ter)

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.

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

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

- We support the inclusion of Draft Regulation 100(1.ter).
- We consider that it is appropriate that a sponsoring State or States gives notice to and provides the Secretary-General with details of any regulatory or other action taken or to be taken as a result of the Inspectors’ findings or recommendations.
- Draft Regulation 100(2) obliges the Secretary-General to make any recommendations to the Council on any regulatory action to be taken by the Council. As such, we consider that it is important the Secretary-General receives all relevant information regarding any regulatory or other action taken, or to be taken, by a Sponsoring State to make any recommendation with all relevant information available.
- We also consider that Draft Regulation 100(1.ter) is consistent with other Articles of the Convention, including:
 - Article 139(1) of the Convention, which obliges State Parties to ensure that persons with nationality of the State Parties carry out activities in the Area in conformity with Part XI of the Convention.

- Annex II, Article 4(4) of the Convention, which will form part of exploitation contract, and provides that "*The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under this Convention*"

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

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 100(2.bis)

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.

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

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

- We do not support the inclusion of Draft Regulation 100(2.bis).
- We consider that it is not for the Regulations to determine what is or what is not admissible evidence for the purposes of any dispute resolution proceeding.
- It is the role of the dispute resolution body established under Part XI Section 5 of the Convention to determine what evidence is admissible under the relevant proceedings and arbitral rules.
- Article 188 of the Convention provides for multiple dispute resolution forums, each which may apply different laws and rules of evidence. As such, it is not appropriate, necessary and may be unenforceable for the Draft Regulations to determine what is and what is not admissible in such dispute proceedings.

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

Informal Working Group – Inspection, Compliance and Enforcement

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@isa.org.jm.

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

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 100(2)

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 Secretary-General shall report annually to the Council 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 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.~~

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

- We support the proposed amendments to Draft Regulation 100(2).
- We consider that it is appropriate that a sponsoring State or States notifies and provides the Secretary-General with details of any regulatory or other action taken or to be taken as a result of the Inspectors’ findings or recommendations.
- We also consider that this is consistent with other Articles of the Convention, by which regulatory action may be taken, including:
 - Article 139(1) of the Convention, which obliges State Parties to ensure that persons with nationality of the State Parties carry activities in the Area in conformity with Part XI of the Convention.
 - Annex II, Article 4(4) of the Convention, which will form part of exploitation contract, and provides that "*The sponsoring State or States shall, pursuant to article 139, have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in*

the Area in conformity with the terms of its contract and its obligations under this Convention"

- We consider that the status of any regulatory action is important information for the Secretary-General to receive to inform any recommendations that the Secretary-General makes to the Council on any regulatory action to be taken by the Council under Draft Regulation 100(2).

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Informal Working Group – Inspection, Compliance and Enforcement

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

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Facilitator's comments on Draft Regulation 101

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.

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

- We support the Facilitator's comments.
- We consider that any review function of an Inspector's conduct should sit with the Secretary-General.
- The Secretary-General will therefore review both: (i) recommendations of the Inspector; and (ii) any complaints regarding the conduct of the Inspector.
- As the Facilitator commented regarding Draft Regulation 97, "*the Council is not by the Convention required to perform the day-to-day*" oversight of the inspection mechanisms it has put in place (Article 162(2)(z) of the Convention and Draft Regulation 96(1)).
- Further, Draft Regulation 97(3) provides that the Secretary-General shall manage and administer such inspection programme.
- We consider it appropriate, that in managing and administering the inspection programme, it is the Secretary-General that will review any complaint and take any action under Draft Regulation 101.

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Informal Working Group – Inspection, Compliance and Enforcement

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

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 102(2.ter)

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.

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

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

- We support the inclusion of Draft Regulation 102(2.ter), subject to our amendments proposed above.
- We consider it appropriate and necessary that any obligations created under Draft Regulation 102(2.ter) refer to the Contractor's Environmental Monitoring and Management Plan (**EMMP**). As set out in Draft Regulation 48, the EMMP includes, among other things, the Contractor's commitments on mitigation measures and monitoring of such measures.
- Further, pursuant to Draft Regulation 48, the EMMP shall contain the information set out in Annex VII, which includes, among other things:
 - "[a] description of the planned monitoring programme and the overall approach, standards, protocols, methodologies, procedures and performance assessment of the Environmental Monitoring and Management Plan" and
 - "[d]etails of the proposed monitoring stations across the project area, including the frequency of monitoring and data collection, the spatial and

temporal arrangements for such monitoring and the justification for such arrangements"

- We consider that it is important that any general obligations under Draft Regulation 102(2.ter) are consistent with the agreed EMMP forming part of the Plan of Work.

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

Informal Working Group – Inspection, Compliance and Enforcement

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

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 102(2)

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.

All ~~{mining vesselsInstallations}~~ and mining collectors ~~{involved in exploitation activities under the Exploitation contract activities}~~ shall be fitted with ~~{an electronic monitoring system}~~ ~~{a satellite positioning device}~~. Such ~~system device~~ 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~~.

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

- We support the amendments proposed in Draft Regulation 102(2), subject to the additional amendments we have proposed.
- From a practical perspective, we have proposed to include the words "*where technically feasible*", with respect to recording in "real time".
- We intend to have an Automatic Identification System, which will provide the location of all vessels deployed.
- The position of subsea assets will be located acoustically when within acoustic range of the vessel and by inertial navigation systems when outside of this range.
- Based on current technology, we cannot guarantee the real time location, as this requires constant satellite communications which cannot currently be guaranteed.
- On this basis, we have proposed to include "*where technically feasible*". Such that, where technically feasible, a Contractor will meet this obligation.

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

Informal Working Group – Inspection, Compliance and Enforcement

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

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd

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

Draft Reg. 103(5.bis)

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.

5.bis The Secretary-General shall make public any compliance notice issued to a Contractor, 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.

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

- We consider that in addition to the requirement that the Secretary-General make public any compliance notices issued to Contractors, that any response provided by the Contractor or Sponsoring State also be made public and any follow up actions duly noted.
- We agree with the intention of transparency underlying Draft Regulation 103(5.bis), however, we consider it important that the Contractor or Sponsoring State's response is also publicly available and accessible at the same location as the compliance notice.
- We also note that, pursuant to Draft Regulation 90(1), the Secretary-General is under an obligation to maintain the confidentiality of all Confidential Information. Further, the Secretary-General shall not, except with the prior written consent of the Contractor, release such information (pursuant to Draft Regulation 90(4)).
- We consider that the Secretary-General's confidentiality obligations should be considered prior to making publicly available any compliance notice, and may

need to consider redacting part of the compliance notice and seek the written consent of the Contractor.

- On this basis, we have also proposed that 103(5.bis) is "*subject to the confidentiality obligations of Regulation 90*".