

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

Informal Working Group - Environment

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 by 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. 44(1)(a)(i)

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.

(i) Apply the precautionary ~~[approach]~~ ~~[principle]~~, as reflected in principle 15 of the Rio Declaration on Environment and Development and the **ecosystem-based management approach** to the assessment and management of risk **of harm** to the Marine Environment from Exploitation in the Area;

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

- We do not support the elevation of the "*precautionary approach*" as contained in Principle 15 of the Rio Declaration to a "*principle*" of international law under the Draft Regulations.
- We note that there is a lack of consensus under international law regarding the basis, scope and content of the precautionary approach as contained in Principle 15 of the Rio Declaration.
- For the benefit of the Facilitator, Principle 15 reads as follows:
"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."
- Principle 15 is not a binding principle of international law: this is evident from the operative text itself, which uses the term "*approach*", rather than "*principle*" (the latter having the potential to symbolize an obligation under international law).

- As ITLOS observed in 2011, Principle 15 is "*a non-binding statement of the precautionary approach*" (Responsibilities and obligations of States with respect to activities in the area, Advisory Opinion, 1 February 2011, ITLOS Rep. 2011, para. 127).
- The weight of the prevailing international law jurisprudence is that the precautionary approach is not a binding principle of international law i.e., no international tribunal has recognized that the precautionary approach is a binding principle of international law.
- We submit it would be inaccurate and inconsistent with international jurisprudence to elevate the "*precautionary approach*" to an international law principle in the Draft Regulations.

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Submitted by 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. 44(1)(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.

(c) In taking necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment, ~~including the coastline, and of interference with the ecological balance of the Marine Environment~~ arising from Exploitation in the Area, the Enterprise and Contractors shall implement, mutatis mutandis, the measures set out under paragraph (a)(i) to (iii) above and demonstrate accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation in the Area, including through Stakeholder participation and the timely public release of environmental data and information on their respective activities at regular intervals and in an accessible format. In so doing, the Enterprise and Contractors shall apply a priority order to avoid, minimize, mitigate, and remediate harm to the marine environment, as well as adapt the necessary measures to newly emerged information and data.

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

- We propose the deletion of the words: *"including the coastline and of interference with the ecological balance of the Marine Environment"*.
- We consider that the defined term *"Marine Environment"* is sufficiently wide enough to cover the intended purpose to prevent, reduce and control pollution and other hazard to the Marine Environment.
- The introduction of undefined terms such as *"coastline"* and *"ecological balance"* causes confusion and are unnecessary to achieve the intended aim of this regulatory provision.

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Submitted by 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. 44(1)

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.

44(1). The Authority, sponsoring States, the Enterprise and Contractors shall each, within their respective competence, adopt, plan, implement and modify measures necessary for ensuring the effective protection of the Marine Environment, ~~including [rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species] and other forms of marine life,~~ from harmful effects ~~[directly resulting from Exploitation in the Area or from shipboard dewatering immediately above a mine site of minerals derived from that mine site,] [which may arise from activities in the Area],~~ in accordance with the Rules of the Authority, Guidelines referred to in regulation 45 and the applicable Regional Management Environmental Plan. To this end:

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

- We do not support the inclusion of the square bracketed text [rare or fragile ecosystems as well as the habitat of depleted, threatened, or endangered species] and "and other forms of marine life".
- We note that "Marine Environment" is a defined term under the Draft Regulations and is sufficiently broad and inclusive that additional specificity is not required.
- We consider the inclusion of undefined terms such as "rare or fragile ecosystems" and "depleted, threatened or endangered species" will cause uncertainty in the interpretation of the Draft Regulations.
- We also consider the specificity of the second square bracket [directly resulting from Exploitation in the Area or from shipboard dewatering immediately above a mine site of minerals derived from that mine site] can be simplified and suggest that "Exploitation in the Area" covers the intention of the proposed square bracketed text.

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Submitted by 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. 44(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.

~~Alt 1~~ An application for a Plan of Work shall not be considered by the Commission until and unless a Regional Environmental Management Plan has been adopted by the Council for the particular area concerned. In the event that an application for a Plan of Work is submitted for an area where no such Regional Environmental Management Plan exists, the drafting of a Regional Environmental Management Plan applicable to the area in concern shall be prioritised and adopted without any undue delay, taking into account Section 2, Article 15 b/c of the 1994 Implementing Agreement.]

~~Alt 2 Before the establishment of a Regional Environmental Management Plan (REMP) in all the regions where exploration contracts already exist, the commercial production in the Area shall not be allowed.~~

~~Alt 3 A Regional Environmental Management Plan for the particular area concerned should be adopted by the Council before seeking the application for a Plan of Work for that area. In the event, that an application for a Plan of Work is submitted for an area where no such Regional Environmental Management Plan exists, the drafting of a Regional Environmental Management Plan applicable to the area in concern shall be prioritised and adopted within one year without any undue delay, taking into account Section 2, Article 15 b/c of the 1994 Implementing Agreement.~~

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

- We are not supportive of the Alt 2 proposal and can support either Alt 3 or Alt 1.
- We consider that Alt 3 is a helpful proposal in ensuring that further REMPs be developed and adopted under a specified timeframe to give certainty to the Authority, Sponsoring States and Contractors.
- We consider that it is excessive and unreasonable to require REMPs be established for all regions where exploration contracts already exist before any commercial production is allowed.

- Alt 2 creates a *de facto* moratorium on commercial production until all REMPs are established.

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Submitted by 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. 45(1)(a)-(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.

(a) Environmental quality objectives ~~[and indicators]~~, including on **ecological balance of the marine environment**, biodiversity status, plume density, **toxicity, composition, chemistry**, extent, and sedimentation rates **and light and noise emissions**;

(b) Monitoring procedures;

(c) **Mitigation measures, prevention, reduction and control measures and/or remediation of environmental harm**;

(d) **Baseline Data collection**;

(e) **Technical requirements with regard to the equipment used for the exploitation activities; and**

(f) **Quantitative assessment of environmental effects.**

Or

Environmental Standards and Guidelines shall be developed in accordance with the regulations 94 and 95 and shall include subject matters aimed at ensuring a Contractor does not cause Serious Harm to the Marine Environment

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

- We note the paper submitted by Germany (ISBA/27/C/30) concerning environmental indicators and thresholds and the proposal for the inclusion of the term "*indicators*" in DR45(1)(a). We do not support the inclusion of the square bracketed text [and indicators] and propose its deletion.

- We respectfully request the Facilitator to recall the recommendations by the Legal and Technical Commission, following the workshop in Pretoria, South Africa held between 13 to 15 May 2019, concerning the development of standards and guidelines as contained in the Report of the Chair of the Legal and Technical Commission on the work of the Commission at the second part of its twenty-fifth session (ISBA/25/C/19/Add.1).
- In the Chair's Report, the Commission recommended that the regulatory framework, including standards and guidelines, be developed on the basis of "*an outcome-based approach*", in particular in connection with environmental regulations, drawing on existing best practices in regulatory frameworks for other industries, such as the offshore oil and gas industry.
- Following receipt of the Chair's Report, the Council "*took note*" of the Commission's recommendations and requested the Commission "*undertake work on the standards and guidelines as a priority*" (ISBA/25/C/37). As such, the draft phase one standards and guidelines were to be developed by the Commission on an outcome-based approach in accordance with the Council's decision relating to the Report of the Chair of the Commission.
- We oppose any amendments to the Draft Regulations that are inconsistent with the Council's earlier endorsement of the Commission's recommendation to develop standards and guidelines on the basis of an outcome-based approach and therefore we do not support the inclusion of "*indicators*" in Draft Regulation 45.
- We believe any change would fundamentally alter the basis upon which the environmental phase one standards and guidelines have been prepared by the Commission and upon which stakeholder consultation was conducted.
- We also do not consider the inclusion of the additional text in Draft Regulation 45(a)(c)(d)(e) or (f) as necessary and believe the proposed text is overly prescriptive. We consider it is for the Environmental Standard or Guidelines to describe their contents not the Regulations.
- Alternatively, we propose Draft Regulation 45(1) is replaced to read "*Environmental Standards and Guidelines shall be developed in accordance with the regulations 94 and 95 and shall include subject matters aimed at ensuring a Contractor does not cause Serious Harm to the Marine Environment*".

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Submitted by 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. 45(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.

~~[2. The Authority shall not approve any Exploitation activities unless the necessary environmental Standards [and Guidelines] have been adopted.]~~

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

- We support the approach of ensuring the necessary Environmental Standards are in place prior to any Exploitation activities and note the Council's endorsement of the Commission's recommendation to ensure that all Phase 1 Standards are in place at the time of the provisional adoption of the Draft Regulations, and that all necessary Phase 2 Standards are in place prior to the receipt of a Plan of Work for Exploitation.
- While we support the inclusion of Draft Regulation 45(2), in principle, we are however concerned by the apparent lack of progress in respect to the identification and preparation by the Commission of the Phase II Standards and Guidelines in accordance with Council decision ISBA/25/C/37 and therefore are unable to support the inclusion of Draft Regulation 45(2) until such time as there is a plan and timeline for developing all the necessary Phase 2 Standards and Guidelines.

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Submitted by 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. 46bis(2)(b)(i)-(vi)

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.

(b) ~~An Environmental Impact assessment and evaluation process to describe and predict the nature and extent of the Environmental Effects of the mining operation, including cumulative impacts and residual effects using Best Available Scientific Evidence, Best Environmental Practices, Best Available Techniques, and Good Industry Practice. and taking into account, where applicable:~~

~~(i) The intensity or severity of the impact at the specific site being affected;~~

~~(ii) The spatial extent of the impact relative to the availability of the habitat type affected;~~

~~(iii) The sensitivity/vulnerability of the ecosystem to the impact;~~

~~(iv) The ability of an ecosystem to recover from harm, and the rate of such recovery;~~

~~(v) The extent to which ecosystem functions may be altered by the impact; and~~

~~(vi) The timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life history stages.]~~

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

- We support the inclusion of text that makes it clear in the Regulations that there is a regulatory requirement to complete an environmental impact assessment and evaluation process.

- However, we consider that the level of detail contained in Draft Regulation 46bis(2) is inconsistent with the regulatory approach taken with respect to other features of the Exploitation Regulations and is more appropriately placed in the Standard and Guidelines for the Environmental Impact Assessment process.
- This approach is consistent with the approach taken by the Legal and Technical Commission in the preparation of Phase I Standards and Guidelines and facilitates more prescriptive details to be provided to the applicant contractor.

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

Draft Reg. 46bis (4)(d)

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. The environmental impact assessment process shall:

(a) Be based on relevant baseline data that captures temporal, ~~and~~ seasonal and spatial variation;

(b) Include an environmental risk assessment that takes into consideration the region as a whole, in accordance with the objectives and measures of the relevant Regional Environmental Management Plan, if any;

(c) Provide for ~~s~~stakeholder consultation in accordance with relevant Standards and Guidelines at the scoping stage and before the Environmental Impact Statement is finalized; and

~~(d) Be subject to an independent scientific assessment prior to the submission of the proposed Environmental Impact Statement to the Authority.~~

[(e) Take into account the results from test mining, in accordance with Regulation 48bis]

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

- We do not support the requirement for a third-party "independent scientific assessment" of the proposed Environmental Impact Statement (EIS) prior to the submission of the EIS to the Authority.
- Pursuant to Article 165 of the Convention, the Legal and Technical Commission (**Commission**) was established as a subsidiary organ of the Council to: review plans of work for activities in the Area (Article 165(2)(b)), supervise activities in the Area (Article 165(2)(c)), and make recommendations on the protection of the marine environment (Article 165(2)(e)). The EIS forms part of a Plan of Work.

- We consider that it is the role of the Commission to review the adequacy of the EIS as part of the Commission's review of an applicant's Plan of Work and not that of unknown third party independent experts.
- We note that the Commission is the Authority's body of independent experts, and we consider it a duplication of powers, if the Draft Regulations require "*independent scientific assessment*" by third parties to ensure the adequacy of an applicant's EIS.
- If the Commission requires additional expertise to assess the adequacy of an EIS, the Commission has the power under Article 165(2)(e) to appoint and manage their own experts.
- We therefore do not support the inclusion of Draft Reg. 46bis (4)(d) as it is unnecessary, duplicative and infringes on explicit powers granted to the Commission under the Convention.

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Submitted by 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. 48bis

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. The purpose of test mining is to ensure that the proposed mining equipment is technically appropriate, the operation economically efficient and that effective protection of the ~~marine environment~~Marine Environment from harmful effects is ensured. Test mining projects shall as a general rule provide evidence that appropriate equipment is available to ensure the effective protection of the Marine Environment in accordance with Article 145.
2. Before applying for an approval of a Plan of Work, a Contractor has to provide evidence to substantiate the required information in accordance with Regulation 7. A test mining study in accordance with Annex [IVter] shall be submitted with the application for the approval of a Plan of Work.
3. Before Commercial Production may commence in accordance with Regulation 25, a Contractor shall provide evidence demonstrating its ability to ensure effective protection of the Marine Environment, if there has been a material change pursuant to Regulation 57.
4. Contractors should apply for the approval for test mining projects from the Authority in accordance with the Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area. ~~-all relevant Regulations, Standards and Guidelines. The potential effects of test mining projects shall be assessed in the form of an Environmental Impact Assessment. Potentially affected States, international organisations and relevant Stakeholders shall be consulted in accordance with the relevant Standards and Guidelines.~~
5. A test mining study pursuant to Paragraphs 2 and 3 does not have to be submitted if the evidence required has been demonstrated through test mining during exploration phase or in the context of another approved Plan of Work for an exploitation project. The Contractor has to submit relevant information to the LTC. The Commission shall decide whether the submission of a test mining study pursuant to Paragraph 2 or 3 is required.]

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

- We believe that all testing of mining equipment will occur under the exploration phase. In this regard, we note that Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area already exist and detail the EIS and EMMP requirements for seeking a positive Recommendation from the Commission to conduct test mining under an exploration contract.
- We therefore do not consider it necessary to include a Standard and/or Guidelines on test mining under the Exploitation Regulations.
- We therefore have sought to streamline Draft Regulation 48 to ensure consistency with the Regulations on Exploration.

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

Draft Reg. 52(1)

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. ~~A Contractor shall conduct performance-compliance assessments of the Environmental Management and Monitoring Plan. The Authority- Commission shall review the performance-compliance assessments of the Environmental Management and Monitoring Plan undertaken by the Contract a competent and independent auditor hired by a Contractor. the Contractor~~ in accordance with the relevant Standards and taking account of the relevant Guidelines to assess:
 - (a) The compliance of the mining operation with the plan;
 - (b) The continued appropriateness and adequacy of the plan, including the management conditions and actions attaching thereto; and
 - (c) The conformity of the plan with the relevant-applicable Regional Environmental Management Plan, if any.

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

- We note that the present draft text creates confusion between "*performance*" and "*compliance*" assessments of the EMMP. We suggest that a Contractor will conduct compliance and not performance assessments against the approved EMMP. We therefore propose the term "*compliance assessment*".
- We do not support the requirement for a third-party "*independent auditor hired by a contractor*" to conduct a compliance assessment of the EMMP.
- Pursuant to Article 165 of the Convention, the Legal and Technical Commission (Commission) was established as a subsidiary organ of the Council to: supervise activities in the Area (Article 165(2)(c)), make recommendations on the protection of

the marine environment (Article 165(2)(e)) and coordinate the implementation of the EMMP as approved by the Council (Article 164(2)(h)).

- We consider that it is the role of the Commission to coordinate the compliance assessment of the EMMP and not that of third-party independent auditors hired by a contractor.
- In the event that the Commission requires independent auditors to conduct a compliance assessment of the EMMP, the Commission has the power under Article 165(2)(e) to appoint its own auditors.

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Submitted by 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. 52(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. Where the Commission considers the ~~performance—compliance~~ assessment ~~undertaken by the Contractor~~ to be unsatisfactory ~~or the report submitted to be inadequate~~, taking ~~into~~ account ~~of the relevant~~ Guidelines and the Environmental Management and Monitoring Plan, the Commission may, ~~after providing the Contractor with a reasonable opportunity to address any inadequacies~~, require the Contractor to:

[(a) Repeat the whole or relevant parts of the ~~performance—compliance~~ assessment, and revise and resubmit the report;]

(b) Submit any relevant supporting documentation or information requested by the Commission ~~including a revised report~~; or

- [(c) Appoint, at the cost of the Contractor, an independent competent person to conduct the whole or part of the ~~performance—compliance~~ assessment and to compile a report for submission to the Secretary-General and review by the Commission].

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

- We note that the present draft text creates confusion between "performance" and "compliance" assessments of the EMMP. We suggest that a contractor will conduct compliance and not performance assessments against the approved EMMP. We therefore propose the term "compliance assessment".
- We suggest that it in the interest of due process and ensuring the Authority provides fair and equitable treatment that a contractor be afforded a reasonable opportunity

to address any inadequacies before taking any of the further regulatory steps in DR52(5)(a-c).

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

Draft Reg. 54

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. The rules and procedures of the Fund shall be established by the Council on the recommendation of the Finance Committee ~~before the commencement of commercial activities~~ [before the commencement of Commercial Production] ~~[prior to the grant of an exploitation contract under these regulations]~~ ~~[before the approval of a first plan of work for exploitation].~~

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

- We are concerned that the addition of the proposed square bracketed text may unintentionally delay either the commencement of Commercial Production, the grant of an exploitation contract, or the approval of a Plan of Work until the Fund is established, capitalised and operational.
- We support the immediate preparation of rules and procedures of the Fund by the Finance Committee.
- We do not consider that the Fund needs to be funded at its maximum threshold limit at any time prior to the commencement of Commercial Production and that a tiered approach should be adopted, increasing the size of the Fund based on the number of contractors in Commercial Production.
- We believe any lack of rules and procedures in Section 5 of the Draft Regulations should not operate to prevent either: (i) the grant and issuance of an exploitation

contract to an applicant contractor who has met all requirements under the Regulations; or (ii) the approval of a Plan of Work for exploitation.

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Submitted by 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. 55

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 purpose of the Fund is the funding of or compensation for the implementation of any necessary measures ~~designed to prevent, limit or remediate~~designed to prevent, reduce and control and if appropriate and feasible, limit and remedy any damage to the Area arising from activities in the Area and the restoration and rehabilitation of the Area when technically and economically feasible and ~~supported by~~in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques when the costs of ~~such measures and efforts~~such measures and efforts ~~which~~ cannot be recovered from ~~a~~the ~~responsible~~ Contractor or ~~s~~Sponsoring State, as the case may be.

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

- We support the inclusion of the additional text "*and if appropriate and feasible, limit and remedy*".
- We consider this language is important as it recognizes that it may not always be feasible to remediate any or all damage to the Area arising from activities in the Area.

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Submitted by 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. 61

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. A Contractor shall implement the final Closure Plan ~~in accordance with the conditions of its implementation~~ and shall report to the Secretary-General on the progress of such implementation on an annual basis, including the results of monitoring under paragraph 2 below, as set out in ~~the and until completion of the~~ final Closure Plan.
2. The Contractor shall continue to monitor the Marine Environment for such period after the cessation of activities, as set out in the final Closure Plan and for the duration provided for in the relevant ~~Standards and taking into account relevant Guidelines and release monitoring data publicly and in an accessible format at monthly intervals.~~
3. ~~Upon completion of implementation of the final~~ ~~At the completion of the Closure Plan,~~ The Contractor shall ~~hire a competent and independent auditor to~~ conduct a final ~~performance-compliance~~ assessment and submit a final ~~performance-compliance~~ assessment report in accordance with the ~~Standards and taking into account relevant~~ Guidelines to the Secretary-General to ensure that the closure objectives as ~~described-contained~~ in the final Closure Plan have been met. Such report shall be reviewed by the Commission at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting.

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

- We consider that it is critical to clearly reflect in the Regulations when a contractor's obligations for post-closure monitoring ceases.
- We note that all post-closure monitoring requirements will be contained within the final approved Closure Plan and therefore it is appropriate to clearly note in Draft

Regulation 61 that post-closure monitoring, including any reporting obligations cease once the final Closure Plan is completed.

- We believe specifying the reporting frequency within the Regulations is too prescriptive and does not allow for evolving best practices.
- We would prefer to see reporting frequencies developed jointly by the Commission and Contractor, therefore allowing for adjustment over time if required.

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

Informal Working Group - Environment

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 by Nauru Ocean Resources Inc. and Tonga Offshore Mining Ltd.

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

Annex III (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 Scoping Report should be submitted to the Authority in accordance with the relevant Standard and Guidelines, and should include:~~

~~(a) — A brief description of the proposed Exploitation activities and any ancillary features, including what is known or anticipated about where the mining will occur within a Contract Area and the mining machinery to be used.~~

~~(b) — A description of what is known about the environmental setting for the project (Contract Area and regional setting).~~

~~(c) — Summary of existing environmental baseline studies, including a description of methodology for collecting and analyzing the baseline data.~~

~~(d) — Description of the technical, spatial and temporal boundaries for the EIA.~~

~~(e) — A list of any assumptions relied upon and identification and quantification of the uncertainties at this stage of the EIA, how they are being addressed, and assessment of their implications to the environmental risk assessment findings~~

~~(f) — A preliminary impact analysis which ranks the importance of issues for the EIA and evaluates the need for further information, taking into account the environmental risk assessment.~~

~~(g) — An environmental risk assessment, which includes:~~

~~(i) — the environmental consequence for each identified potential impact (the magnitude of the impact and the receptor characteristics);~~

~~(ii) — the likelihood of the consequence occurring;~~

~~(iii) — the confidence levels of experts, in order to account for uncertainty and a precautionary approach;~~

~~(h) — A description of the methodology employed in the environmental~~

risk assessment

~~(i) — A description of the results of the environmental risk assessment, including identification of high priority risks~~

~~requiring particular focus in the subsequent impact assessment phase of the EIA;~~

~~(j) — A preliminary Stakeholder list that proactively identifies likely Stakeholders, and an indicative schedule and methodology for engagement with key Stakeholders throughout the EIA process;~~

~~(k) — A report of consultations undertaken during scoping;~~

~~(l) — Consideration of feasible alternative means of carrying out the project that will be examined in detail in the EIA, and any others that have been discounted at this stage, and the reasons for that selection;~~

~~(m) — A draft Terms of Reference for the EIA, which identifies the activities and studies planned for the EIA, and any additional baseline data that will be required;~~

~~(n) — Explanation for how the activities and studies planned for the EIA will be sufficient to determine likely environmental impacts, and to propose Mitigation and management strategies and monitoring methodology;~~

~~(o) — A note describing and explaining any divergence from relevant ISA Guideline~~

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

- We do not support a separate Annex within the Regulations detailing the potential requirements of a Scoping Report.
- We note that a Scoping Report forms one of several parts of the EIA Process and it is unnecessary and overly prescriptive to include an Annex in the Regulations dedicated to the Scoping Report.
- This is not the approach taken to other parts of the EIA Process as reflected in the Draft Regulations or the approach taken by the Legal and Technical Commission in the preparation for the draft Standard and Guidelines for the EIA Process.
- We believe that any guidance that suggests specific elements of a Scoping Report should follow the existing approach to the development of the Draft Regulations and Phase I Standards and Guidelines and should be contained within the Standards or Guidelines for the EIA Process.

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COUNCIL - PART II**

Informal Working Group - Environment

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

Submitted by 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.

Annex IV, Part 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.

**4. Description of the existing
physicochemical ~~oceanographic~~
environment**

Give a detailed account of knowledge of the environmental (physical, chemical, geological, oceanographic) conditions at the ~~mine site~~ impact area, which should include information from a thorough literature review as well as from on-site studies. The Guidelines on baseline data collection shall guide the drafting of this section by providing information on the minimum amount of detail required for an acceptable baseline description. The account will provide the baseline description of the physical, chemical, geological and oceanographic conditions against which impacts will be measured and assessed. The detail in this section is ~~expected to be~~ based on a prior environmental risk assessment that will have identified the main impacts, and thus the elements that need to be emphasized in the environmental impact assessment.

4.1 Key messages

Provide an overview of key content (this information can be provided in a box that contains up to 6 bullet points on either the main aspects covered or the main findings).

4.2 Regional overview

Describe the general baseline environmental conditions of the site and impact area, including but not limited to the physical, chemical geological and oceanographic setting within a broader regional context and ~~refer~~ in accordance with to the applicable Regional Environmental Management Plan if any. This should be brief section that includes a map. A more detailed site-specific and impact area description will be provided in accordance with the

sections below.

4.3 Studies completed

Describe any prior research/Exploration (including methods used for completing the studies based on Best Available Techniques) that could provide relevant information for this Environmental Impact Statement and future activities. These should be detailed in the appendices, and the environmental reference baseline data collected for the Authority, as outlined in the exploration contract conditions, should accompany the Environmental Impact Statement.

4.4 Meteorology and air quality

Provide a general overview of meteorology/climatology (e.g., wind directions and speeds, seasonal patterns). This section may be most relevant to surface operations.

4.5 Geological properties and habitat classification setting

Describe the nature and extent of the mineral resource and bedrock within a broader geological context. Describe the geological petrographic and geomorphological setting of the site, including high-resolution bathymetric maps and sedimentation rates, and refer to submarine features such as hydrothermal vents, seeps and seamounts. Provide a baseline description of seabed substrate composition characteristics (to benthic subsurface layers), including specific gravity, bulk density, grain size, dissolved and particulate organic and inorganic carbon, nutrients, carbonate, physical and chemical composition of pore water, redox regimes, and spatial (horizontal and vertical) and temporal (seasonal and interannual) variability in these characteristics. Substrate composition shall be described to a depth below the seafloor prescribed in the relevant Standard or Regional Environmental Management Plan.

4.6 Physical oceanographic setting

Provide a description of oceanographic aspects such as thermohaline conditions, optical properties and turbidity, currents regime, tides, waves, turbulence, and oceanographic fronts and eddies. Seasonal variability is an important element. Detail is required on the regional setting, as well as the specific site, and should include changes in physical conditions and processes according to depth and horizontal distance from the proposed mine site (near-field, far-field).

4.7 Chemical oceanographic setting

Provide a description of water mass characteristics at the site and above the site at various depths of the water column, including the structure and development of the oxygen minimum zone in particular near the sea floor (up to 200m above bottom), that includes nutrients, particle loads, temperature and dissolved gas profiles, vent-fluid characteristics if applicable, turbidity, etc.

Provide a description of chemical oceanographic properties at the site and above the site throughout the water column, that includes nutrients, particle loads, temperature, oxygen, salinity, density, particulate and dissolved organic matter, pH, chemical composition, including concentrations of trace metals, dissolved gas profiles, depth range and characteristics of oxygen minimum zone, redox regimes, carbonate saturation, and spatial (horizontal and vertical) and temporal (seasonal and interannual) variability of these properties, and vent fluid characteristics if applicable. Provide projections of how and where these aspects are likely to change over the next 50 years (or time period relevant to the contract term and subsequent Closure period.)

4.8 Seabed substrate characteristics

Provide a description of seabed substrate composition, including physical and chemical properties (e.g., sediment composition, pore-water profiles, grain

size, sediment mechanics, dissolved and particulate organic and inorganic carbon, nutrients, carbonate, redox regimes, and spatial (horizontal and vertical) and temporal (seasonal and interannual) variability in these characteristics).

4.9 Natural hazards

Provide a description ~~of~~ and trend analysis of variation related to applicable potential natural hazards for the site, including volcanism, seismic activity, cyclone/hurricane ~~trends~~, tsunamis, etc.

4.10 Noise and light

Provide a description of ambient noise and light, including light intensity, backscatter, and attenuation, and spatial (horizontal and vertical) and temporal (seasonal and interannual) variability in these characteristics, indicating pertinence to fauna where known, and the influence of existing Exploitation, Exploration and maritime activity.

4.11 Greenhouse gas emissions and climate change

Provide a description of the level of gas and ~~chemical- fluid~~ emissions from both natural and anthropogenic activities in the Area, as well as those affecting sea floor and water-column chemistry. Any Effects-effects of mining on ocean climate mitigation functions and services should be described (including any anticipated alteration of CO2 uptake and sequestration, or nutrient cycling).

4.12 Summary of the existing physicochemical environment

Summarize key findings and include notes on special considerations for hydrothermal vents, seeps, ridges, seamounts and oceanographic fronts or eddies, and other geological and oceanographic features described in this section. It is anticipated that this summary will be up to one page and be more extensive than the key messages section.

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

- We do not support the overly prescriptive proposed amendments to Annex IV, Part 4 or to Annex IV generally.
- Whilst we support proposed amendments that provide a general direction to study the various components of the physical environment (i.e., chemistry, substrate, geology etc.), prescriptive details such as having to measure grain size, salinity, density etc. are more appropriately contained in the guidelines and not the regulations.
- This is the approach the Commission took in the preparation of the Draft Regulations and the Phase I Standards and Guidelines.
- We consider placing this level of detail in the regulations does not anticipate a future situation in which the Authority, as Regulator, is considerably more informed and it may not be necessary to collect data at this level of detail. It also makes it more challenging to amend these requirements based on new practices or knowledge or add additional requirements.
- The prescriptive details are considerably easier to amend and be updated by the Commission in the form of Guidelines then to seek subsequent amendments or updates to the Regulations.

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

Informal Working Group - Environment

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 by 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.

Annex IV, 11.2 – 11.3

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.

11.2 Environmental management system

A full environmental management system shall exist at the time the Environmental Impact Statement is submitted or at the time of submitting the Environmental Management and Monitoring Plan. The applicant has to demonstrate that it will be capable of managing ~~all~~ appropriate relevant environmental questions, and outline the standards that will be considered and/or aligned with when developing the system for the project.

11.3 Environmental Management and Monitoring Plan

An Environmental Management and Monitoring Plan will be submitted as a separate document for the Authority’s approval prior to the commencement of mining operations. This section should provide an overview of what the Plan would entail. ~~With reference to This section should include, at a minimum,~~ the headings set out below and Annex VIII of the Exploitation Regulations of the Authority. Alternatively, the applicant may prefer to submit the draft Environmental Management and Monitoring Plan alongside this EIS and use this section to cross-refer.

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

- We consider that it is unreasonable and impracticable to require the submission of a full environmental management system (the **EMS**) prior to the submission of the Environmental Management and Monitoring Plan (the **EMMP**).
- Pursuant to the requirements contained in Draft Regulation 46, it will only be possible to prepare a full EMS addressing the site specific environmental objectives and standards in the EMMP once the EMMP is prepared.

- As the present Draft Regulations allow the EMMP to be submitted prior to the commencement of mining operations, Annex IV 11.2 must be amended to equally reflect the possibility that the EMS may also be submitted to the Authority prior to the commencement of mining operations.

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COUNCIL - PART II**

Informal Working Group - Environment

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

Submitted by 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.

DR 46(2)(b) & (d), DR 46ter (3), DR 48(4), DR 52(2) and DR 61(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.

DR 46(2)(b) & (d)

(b) Be audited periodically ~~annually~~ by an independent recognized and accredited international or national organization at an interval to be agreed to by the Legal and Technical Commission and the Contractor; and

(d) [Undergo periodic an annual management reviews and include the results in the Contractor’s annual reports and the performance assessment of the Environmental Management and Monitoring Plan under Regulation 52].

DR 46ter (3)

3. The Contractor shall report annually in writing in accordance with these regulations to the Secretary-General on the implementation and results of the an environmental management and monitoring programme plan referred to in paragraph 2, in accordance with regulation 38, paragraph 2(g), and shall submit release publicly, in an accessible format, at monthly intervals data and information in the required standardized format, and in accordance with the relevant applicable Standards, and taking into account the relevant applicable Guidelines and recommendations issued by the Commission. The Secretary-General shall transmit such annual reports to the Commission for its consideration pursuant to article 165 of the Convention and publish them pursuant to Regulation 38(3).

DR 48(4)

4. The Contractor shall provide information in its annual report on the implementation of the

Environmental Management and Monitoring Plan in accordance with regulations 38, paragraph 2(g), and 46ter, paragraph 3, for evaluation by the Legal and Technical Commission, as well as publicly release, in an accessible format, monitoring data and information at monthly intervals.

DR 52(2)

2. The frequency of a performance assessment shall be in accordance with the period specified in the approved Environmental Management and Monitoring Plan ~~and shall occur at least annually [every [twenty four months] [thirty six months] years];~~

DR 61(2)

2. The Contractor shall continue to monitor the Marine Environment for such period after the cessation of activities, as set out in the final Closure Plan and for the duration provided for in the relevant Standards and taking into account relevant Guidelines and release monitoring data publicly and in an accessible format ~~at monthly intervals.~~

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

- We wish to express a general concern to the significant increase in the reporting burden and frequency of reporting on the contractor.
- We believe specifying the reporting frequency within the Regulations is too prescriptive and does not allow for evolving best practices.
- We would prefer to see reporting frequencies developed jointly by the Commission and Contractor, therefore allowing for adjustment over time if required.
- The proposed reporting burden will also place a significant burden on the Secretariat and Legal and Technical Commission.
- We also have a concern with the requirement for contractors to appoint independent experts to assess compliance with their performance obligations.
- We consider that the review function of any contractor's compliance or performance obligations is an explicit task of the Legal and Technical Commission and should not be duplicated or outsourced by a contractor to independent experts.
- Pursuant to Article 165 of the Convention, the Commission has the power to seek external expertise should it wish to seek a separate opinion on a performance or compliance report.
- The above provisions are all instances, where we consider the reporting obligation to be overly burdensome and where the review by independent experts would be more appropriately conducted by the Legal and Technical Commission.