

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

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

1. Name of Working Group:

IWG of the Whole.

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

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

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

Draft Reg 20(1).

4. 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.

Subject to the provisions of section 8.3 of the exploitation contract, the maximum initial term of an exploitation contract is 30 years ~~{and-or 50 years for Contractors which are sponsored by developing States} from the commencement of Commercial Production,~~ ~~{the parties may agree to a minimum initial term of 15 years},~~ taking account of the expected economic life of the Exploitation activities of the Resource category set out in the Mining Workplan and including a reasonable time period for the construction of commercial-scale mining and processing systems.

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

- We support the proposal to allow more time for Contractors that are sponsored by developing States. We have proposed a minor clarification to Draft Regulation 20(1) to reflect this.
- We consider that the duration of an exploitation contract should be related to the economic life of the project and not a fixed time set in the Exploitation Regulations. Annex III, Article 17(2)(b)(iii) of the Convention provides that:

*The **duration of exploitation should be related to the economic life of the mining project**, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and*

commercial viability. Exploitation should be of sufficient duration to permit commercial extraction of minerals of the area and should include a reasonable time period for construction of commercial-scale mining and processing systems, during which period commercial production should not be required. The total duration of exploitation, however, should also be short enough to give the Authority an opportunity to amend the terms and conditions of the plan of work at the time it considers renewal in accordance with rules, regulations and procedures which it has adopted subsequent to approving the plan of work.
(emphasis added)

- We consider a significant portion of the initial term of an exploitation contract will be spent undertaking activities prior to commercial production. We note that this is acknowledged in Annex III, Article 17(2)(c) of the Convention: "*the interval to bring an area into commercial production should take into account the time necessary for this construction after the completion of the exploration stage and reasonable allowance should be made for unavoidable delays in the construction schedule*".
- To avoid this interval of pre-production activities infringing on the economic life of the mining project, we suggest that the maximum initial term of the exploitation contract commence "*from the commencement of Commercial Production*".

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

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

1. Name of Working Group:

IWG of the Whole.

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

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

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

Draft Reg 20(2).

4. 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 application to renew an exploitation contract shall be made in writing addressed to the Secretary-General and shall be made no later than ~~one year~~ one year ~~two years~~ before the expiration of the initial period or renewal period, as the case may be, of the exploitation contract.

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

- We support the initial text contained in DR20(2), specifically that an application to renew shall be made no later than one year before the expiration of the initial period.
- We consider that it is best practice that a renewal application be submitted as close in time to the expiry of the initial period to ensure that the most accurate information concerning ongoing and proposed activities in the contract area can be provided to the Authority for its consideration in the renewal application.
- We also consider that it will be necessary for a contractor to have the additional time under its initial contract to prepare and submit the renewal application.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

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

1. Name of Working Group:

IWG of the Whole.

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

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

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

Draft Reg 20(3).

4. 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.

3. The Contractor shall supply ~~{a revised plan of work, as well as}~~ such documentation as may be specified in *any applicable* ~~{Standard or}~~ Guidelines. If the Contractor wishes to make any changes to a Plan of Work *and such changes are Material Changes* ~~{and such changes are Material Changes}~~ , the Contractor shall submit a revised Plan of Work ~~{including an updated EIA}~~ .

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

- We oppose the changes proposed to Draft Regulation 20(3) and support the reinstatement of the threshold of "Material Changes".
- First, if the renewal application does not include a Material Change in the Plan of Work, we consider that it is not an appropriate or efficient use of Authority resources to require a Contractor to submit a revised Plan of Work with its renewal application.
- Secondly, there will likely be circumstances where the renewal application is made and the Contractor intends to operate under the same Plan of Work as before.
- We also suggest that it is inappropriate to require the submission of an EIA in Draft Regulation 20(3). If a change that qualifies as a Material Change is made to a Plan

of Work, the requirement to provide an updated EIA is already provided for under the existing Draft Regulations. However, a Material Change that does not change or impact the existing EIA could be made to a Plan of Work. Therefore, we do not consider it accurate or appropriate to require the updating of the EIA in every renewal application.

- We have proposed the reinstatement of "*Material Change*". We consider that it is only appropriate to require a contractor to submit a revised Plan of Work where any changes to the original Plan of Work are material. This is consistent with other parts of the Draft Regulations and existing rules, regulations and procedures of the Authority, in particular Draft Regulation 57.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

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

1. Name of Working Group:

IWG of the Whole.

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

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

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

Draft Reg 20(6)(b)(bis).

4. 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) bis. [The cumulative environmental impact does not exceed the thresholds set by the applicable Regional Environmental Management Plan as a result of the renewal, and that such renewal does not hinder the achievement of the strategic and regional environmental goals and objectives;]~~

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

- We oppose the inclusion of Draft Regulation 20(6)(b)(bis).
- We consider that the proposed amendment does not reflect the Convention. Article 145 of the Convention provides that:

"Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities."
- The existing draft text for Draft Regulation 20(6)(b) accurately reflects Article 145 of the Convention, as it provides for measures adopted by the Authority "to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area".

- Further, not all Regional Environmental Management Plans (**REMPs**) will include environmental thresholds, nor are REMPs required to include environmental thresholds. We also note that it is not the intention of the Draft Regulations to establish environmental thresholds within the regulatory framework and that an "*outcome based*" approach is to be followed in the preparation of a Plan of Work for exploitation.
- We therefore consider that Draft Regulation 20(6)(b)(bis) should not be adopted as it is inconsistent with the development of REMPs and the rules, regulations and procedures of the Authority.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

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

1. Name of Working Group:

IWG of the Whole.

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

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

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

Draft Reg 20(6).

4. 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.

6. The Commission shall recommend to the Council the approval of an application to renew an exploitation contract, and ~~[an exploitation contract shall be renewed by the Council]~~~~[an exploitation contract may be renewed by the Council]~~~~[and the Council approves the renewal application],~~ provided that:

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

- Subject to the inclusion of our proposed amendments for DR20(3), we support the inclusion of text that "*an exploitation contract shall be renewed by the Council*".
- To ensure commercial certainty and continuation of operations, we consider that if all the required documents have been provided for renewal of the exploitation contract and the Commission has recommended the renewal of the contract that the Council shall approve the application.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

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

1. Name of Working Group:

IWG of the Whole.

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

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

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

Draft Reg 20(7).

4. 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.

Each renewal period shall be a maximum of 150 years. ~~For a maximum overall duration of the exploitation contract of 60 years. [A maximum of two renewals may be requested]~~

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

- We oppose the proposed amendments to Draft Regulation 20(7).
- We consider that the proposed amendments are inconsistent with Annex III, Article 17(2)(b)(iii) of the Convention, which provides:

*“The **duration of exploitation should be related to the economic life of the mining project**, taking into consideration such factors as the depletion of the ore, the useful life of mining equipment and processing facilities and commercial viability. Exploitation should be of sufficient duration to permit commercial extraction of minerals of the area and should include a reasonable time period for construction of commercial-scale mining and processing systems, during which period commercial production should not be required. The total duration of exploitation, however, should also be short enough to give the Authority an opportunity to amend the terms and conditions of the plan of work at the time it considers renewal in accordance with rules, regulations and*

procedures which it has adopted subsequent to approving the plan of work.”
(emphasis added)

- The Convention does not impose limitations on the overall term of an exploitation contract or on the number of renewals that may be requested.
- Therefore, we respectfully suggest the proposed amendments are inconsistent and *ultra vires* to the Convention as they are not related to the economic life of the mining project and should not be adopted.
- Further, we also consider that renewal periods of 10 years are too short, and therefore suggest unlimited renewal periods of a minimum of 15 years, in accordance with the economic life of the mining project, should be adopted to reflect the commercial realities of mining projects.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

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

1. Name of Working Group:

IWG of the Whole.

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

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

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

Draft Reg 20(10).

4. 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 exploitation contract in respect of which an application for renewal has been made ~~shall~~~~[shall]~~ ~~[may, for a maximum of three months after its expiry date and only under extraordinary circumstances]~~, despite its expiry date, remain in force until such time as the renewal application has been considered and its renewal has been granted or refused.

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

- We oppose the proposed amendments to Draft Regulation 20(10).
- We respectfully suggest that it is not commercially feasible for a "maximum" time limit to be imposed on the continuation of an exploitation contract that is the subject of a renewal application.
- The continuation of the exploitation contract in the original Draft Regulation 20(10) provides critical commercial certainty for a Contractor awaiting the outcome of its renewal application.
- Further, we respectfully suggest that it is inappropriate to prevent a Contractor from continuing exploitation activities while the outcome of a renewal application is pending. At the time that a Contractor submits a renewal application, the Contractor will likely have been operating for several years, if not decades, and

will be in a position to continue to operate based on its existing Plan of Work until the renewal application is decided.

- If a Contractor is required to stop operations while awaiting the outcome of a renewal application, the Contractor will likely incur significant and unreasonable costs in decommissioning, care, maintenance and re-commissioning, especially in the event of delay on the part of the Authority in considering the application.