

**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 26(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.

The required form and amount of the Environmental Performance Guarantee shall be determined according to the ~~[Guidelines]~~ ~~[relevant]~~ ~~[Standards]~~ ~~[rules]~~ ~~[applicable Standard and take account of the applicable Guidelines]~~, and shall reflect the likely costs required for:

(a) The premature closure of Exploitation activities;

~~(a) bis. [The repair of an in-service submarine cable or pipeline in, or adjacent to, the application area that was damaged as a result of the Contractors activities;]~~

~~(a) ter. [Responding to, and remediating, a significant environmental Incident;]~~

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

- We oppose the inclusion of Draft Regulation 26(2)(a)(bis) and Draft Regulation 26(2)(a)(ter).
- We consider that it has long been established that the purpose of the Environmental Performance Guarantee under the Draft Regulations, and the basis upon which the Commission prepared the draft Standards and Guidelines, is to provide a financial guarantee that facilitates the closure of a production site should the Contractor be unable to do so. This reflects a common form of guarantee in land-based mining projects around the world, which is designed to protect the community from closure liabilities where an operator is not able to meet them.

- Such third-party closure and decommissioning costs can generally be estimated with reasonable accuracy, which makes them suitable to be provided in the form of a guarantee.
- The proposals in Draft Regulation 26(2)(a)(bis) and Draft Regulation 26(2)(a)(ter) have sought to expand the scope of the Environmental Performance Guarantee to include damage to submarine cables or pipelines and "*significant environmental Incident[s]*".
- We respectfully submit that this is outside the scope and purpose of the Environmental Performance Guarantee and not in keeping with extractive resource industry practice.
- We consider that the liabilities that Draft Regulation 26(2)(a)(bis) and Draft Regulation 26(2)(a)(ter) seek to cover have been covered by, among other provisions:
 - Draft Regulation 36: "*A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with applicable international maritime practice, consistent with Good Industry Practice and as specified in the relevant Guidelines*";
 - Annex X, Section 7.1: "*The Contractor shall be liable to the Authority for the actual amount of any damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions [...]*"; and
 - Article 113 of the Convention: "*Every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury*".
- Further, we consider that it not possible to quantify potential damage or respond to an unknown future Incident. This makes the liabilities the subject of Draft Regulation 26(2)(a)(bis) and Draft Regulation 26(2)(a)(ter) unsuitable to be included in a guarantee.

- We emphasize that there are sufficient existing regulatory protections in place to guard against loss or damage to the Marine Environment, submarine cables and pipelines. This includes: (i) Contractors being required to maintain insurance; and (ii) the creation of the Environmental Compensation Fund.

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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 26(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.

~~*[The Council shall decide the amount of an Environmental Performance Guarantee in Standard taking into account the recommendation of the Commission and Finance Committee.]*~~ *The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period according to the ~~[relevant]~~ ~~[Guidelines]~~ ~~[applicable Standard and take account of the applicable Guidelines]~~.*

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

- We oppose the proposed amendments to Draft Regulation 26(3), as outlined above.
- The proposed Environmental Performance Guarantee is submitted to the Commission as part of the Commission's consideration of an application for a Plan of Work.
- Pursuant to the Convention and the 1994 Agreement, we submit it is not the role of the Council to separately decide if the amount of the Guarantee is sufficient.
- The Commission will consider the proposed Environmental Performance Guarantee, including its calculation, as part of the Commission's consideration of

the Plan of Work. The Commission then makes a recommendation to the Council as to the approval or rejection of the Plan of Work.

- Under the draft Standards and Guidelines on the form and calculation of an Environmental Performance Guarantee, a Contractor submits a third-party cost estimate to justify the amount of the proposed Guarantee. If during the review of the Plan of Work the Commission considers that the proposed Guarantee is not sufficient, the Commission and Contractor can consult to determine a suitable Environmental Performance Guarantee.

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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 26(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.

The requirement for an Environmental Performance Guarantee under this regulation shall be applied in a uniform ~~{and non-discriminatory}~~and non-discriminatory manner ~~{taking into account relevant factors such as: a Contractor's level of experience, record of past performance (i.e. environment or safety record), and the location of the activity, including proximity to in-service cables or pipelines}~~.

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

- We oppose the proposed amendments to Draft Regulation 26(7).
- We consider that the purpose of the Environmental Performance Guarantee is to provide a financial guarantee that facilitates closure of a production site. This reflects a common form of guarantee in onshore mining projects around the world, which is designed to protect the community from closure liabilities where an operator is not able to meet them.
- The proposal in Draft Regulation 26(7) seeks to expand the scope of the Environmental Performance Guarantee to take into account "a Contractor's level of experience, record of past performance (i.e., environment or safety record), and the location of the activity, including proximity to in service cables or pipelines".

- We consider that these factors are irrelevant to the objective determination of third-party costs intended to be covered by the Environmental Performance Guarantee. Further, we consider that Draft Regulation 26(7) is not intended to change the guarantee amount required under an Environmental Performance Guarantee, but rather to emphasize that an Environmental Performance Guarantee is mandatory.