

**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 31(1)(alt)(ter).

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.

~~*1-alt ter. Contractors shall carry out Exploitation under an exploitation contract with reasonable regard for climate mitigation carried out by ecosystem in the area, such as carbon burial and sequestration and nutrients recycling.*~~

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

- We oppose the addition of Draft Regulation 31(1)(alt)(ter).
- We consider that Draft Regulation 31(1)(alt)(ter) seeks to expand the definition of "Activities" as used in the Convention and is ultra vires to the Convention.
- The term "*other activities in the marine environment*" is used in both Article 147(1) and Article 147(3) of the Convention.
- Article 147(1) of the Convention provides: "*[a]ctivities in the Area shall be carried out with reasonable regard for other activities in the marine environment*".
- Article 147(3) of the Convention provides "*[o]ther activities in the marine environment shall be conducted with reasonable regard for activities in the Area*."

- In accordance with general principles of treaty interpretation, we consider that the kinds of "*other activities in the marine environment*" contemplated by Article 147(1) and Article 147(3) are activities undertaken by people operating in the marine environment, not activities of the Marine Environment.
- The purpose of Article 147(1) and Article 147(3) is to provide reciprocal obligations to have regard for "*activities in the Area*" and "*other activities in the marine environment*".
- We consider that "*climate mitigation carried out by ecosystem in the area, such as carbon burial and sequestration and nutrients recycling*" cannot be considered "*other activities in the marine environment*", as these are inherent (potential) functions of the marine environment.
- We therefore submit that Draft Regulation 31(1)(alt)(ter) should not be adopted as it misinterprets the Convention.

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Draft Reg 31(1)(alt).

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~~1. [Contractors shall, [consistent with] [taking into account] the relevant Guidelines, carry out exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment, [including but not limited to submarine cables and pipelines in the Contract Area, fishing activities and other activities], in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan, [Regional Environmental Management Plan] and Closure Plan [and any applicable international rules and standards established by competent international organizations]. In particular, each Contractor shall exercise [due diligence] [reasonable regard] to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area] [or structures deriving from other marine uses] [should carry out Exploitation activities with reasonable regard to submarine cables or pipelines so as to avoid destroying or damaging them]~~

1 alt. Contractors shall, consistent with the relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the approved Environmental Management and Monitoring Plan and Closure Plan and any applicable international rules and standards established by competent international organizations, and relevant national laws and regulations of Sponsoring States and flag States.

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

- We support the replacement of Draft Regulation 31(1) with Draft Regulation 31(1)(alt).

- We consider that Draft Regulation 31(1)(alt) accurately reflects Contractors' obligations under the Convention.
- We consider that the wording proposed in Draft Regulation 31(1) is not consistent with the Convention, in particular the words "[...] *each Contractor shall exercise [due diligence] [reasonable regard] to ensure that it does not cause damage to submarine cables or pipelines in the Contract Area [or structures deriving from other marine uses] [should carry out Exploitation activities with reasonable regard to submarine cables or pipelines so as to avoid destroying or damaging them]*".
- Article 147(1) of the Convention provides: "[a]ctivities in the Area shall be carried out with reasonable regard for other activities in the marine environment". Article 147 does not provide a hierarchy of competing interests or that one activity in the Area takes precedent over another.
- We consider that the proposal in Draft Regulation 31(1) seeks to exceed the requirement on Contractors to have reasonable regard for other activities in the marine environment, and places them at a disadvantage to users of submarine cables and those exercising fishing rights.