

**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 95(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 full text of such Guidelines shall be ~~reported~~ ~~[reported]~~ ~~[recommended]~~ to the Council ~~[for adoption]~~. ~~[In case of Guidelines which are not of a predominantly administrative nature, the Council shall take into account statements submitted by Stakeholders during public consultation]~~. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may request that the guideline be modified ~~[or withdrawn]~~. ~~[Where no such request is made the Council shall approve the Guidelines]~~.

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

- We oppose the proposed amendments to Draft Regulation 95(2).
- The proposed amendments purport to create a right for the Council to adopt Guidelines.
- We consider that if the Council were to "adopt" a Guideline, that guideline would be considered to be a **binding rule**, regulation or procedure of the Authority (as provided or in Article 162(2)(o) of the Convention).
- Further, the proposed amendments to Draft Regulation 95(2) are inconsistent with the recommendation of the Commission to the Council concerning the legal status of "Standards" and "Guidelines" 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**), that is:

"The Commission recommended that the "standards" and "guidelines" of the International Seabed Authority be understood and used in the manner suggested in draft regulations 94 and 95. The standards shall be adopted by the Council, be applied provisionally pending approval by the Assembly (see also para. 15 below) and be legally binding on member States, contractors and the Authority. The guidelines are recommendatory in nature and may be issued by either the Commission or the Secretary-General. The guidelines will be submitted to the Council, which may require their amendment or withdrawal".

- The Council accepted the Commission's recommendation in the Decision of the Council of the International Seabed Authority relating to the reports of the Chair of the Legal and Technical Commission (**ISBA/25/C/37**).
- The proposed amendments are therefore inconsistent with previous recommendations of the Commission and decisions of the Council and should not be adopted.

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Issue of Guidelines

- 1. Guidelines and amendments thereto issued by the Commission or by the Secretary-General shall be Advisory in nature and shall be intended to support the implementation of these Regulations.*
- 2. Guidelines are prepared by the Commission, which shall take into account the views of recognized experts and relevant Stakeholders.*
- 3. Guidelines are prepared in relation to matters of a technical or administrative nature.*
- 4. The full text of such Guidelines shall be reported to the Council. Should the Council find that a Guideline is inconsistent with the intent and purposes of the Authority, it may request that the guideline be modified or withdrawn.*
- 5. The Commission or the Secretary-General shall keep under review such Guidelines in the light of improved knowledge or information from Stakeholders.*

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

- We support the proposal to replace Draft Regulation 95 with Draft Regulation 95(alt).
- We consider that Draft Regulation 95(alt) is consistent with the Convention and the Commission's recommendation to the Council concerning the legal status of "Standards", which are considered mandatory, and "Guidelines", which are only recommendatory in nature (ISBA/25/C/19/Add.1).

- Further, we consider that Draft Regulation 95(alt) provides sufficient and appropriate scope for the Council to request a Guideline to be modified or withdrawn if the Guideline is found to be inconsistent with the intent and purposes of the Authority.