

**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.

Schedule – "Best Available Techniques".

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.

Alt. 1 *~~"Best Available Techniques" means [the latest stage of development, and state of the art the most appropriate processes, [within reasonable technical and economic constraints,] of facilities or of methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the protection of the Marine Environment from the harmful effects of Exploitation activities, taking into account the guidance set out in the applicable Guidelines]~~*

Alt. 2 *~~["Best Available Techniques" means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:~~*

~~(a) 'techniques' includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;~~

~~(b) 'available techniques' means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator.~~

~~(c) 'best' means most effective in achieving a high general level of protection of the environment as a whole;]~~

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

- We oppose the adoption of the definition of "*Best Available Techniques*" in Alt. 2, and support adopting the definition in Alt. 1 subject to the additional amendments outlined above.
- First, we consider that the concept of "*Best Available Techniques*" does not always equate to the latest or state of the art technology. The best available technique is the most appropriate technique, which may be a low-tech solution that is more effective than the latest state of the art technology.
- On this basis, we consider that the proposed factors "*the latest stage of development*" and "*state-of-the-art*" are inappropriate criteria to define "*Best Available Techniques*".
- Should phrases such as "*the latest stage of development*" and "*state-of the art*" be included in the definition of "*Best Available Techniques*", we consider that the words "*within reasonable technical and economic constraints*" should also be adopted.
- Further, the definition of "*Best Available Techniques*" is intended to apply in the Regulations, and will therefore be legally binding. In this context, the definition needs to be achievable from both a practical and commercial sense.
- We consider that additional Standards and/or Guidelines may be a more suitable location for additional descriptors such as "*the latest stage of development*" and "*state-of-the-art*".
- Finally, activities in the Area require significant capital investment and Contractors therefore require business certainty and stability that the technology and equipment developed and approved for Exploitation activities remain approved. We consider a Contractor should be allowed to use their approved methods and equipment for the useful life of such technology, especially given the significant investment and timelines required to design, build and commission such technology.

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Schedule – "Environmental Effect".

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.

"Environmental Effect" means any material consequences in the Marine Environment arising from the conduct of Exploitation activities, ~~[whether]~~ ~~[being]~~ positive, ~~[negative]~~, direct, indirect, temporary or permanent, or Cumulative environmental effect arising over time or in combination with other ~~[mining impacts]~~ ~~[effects or impacts]~~ ~~[stressors and activities in the same area,~~ including those not regulated by the Authority].

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

- We generally support the definition of "Environmental Effect", subject to the amendments proposed above.
- Without the clarification that only "material" consequences are captured, the definition would not operate as intended, as it would cover any and all consequences no matter how insignificant or trivial. Such a definition would be unworkable under the regulatory framework.
- We note that "Environmental Effect" is used as a defined term in Draft Regulations 26 (Environmental Performance Guarantee), 44 (General Obligations), 47 (Environmental Impact Statement), 48 (Environmental Management and Monitoring Plan), 51 (Compliance with the Environmental Management and Monitoring Plan), 59 (Closure Plan), and 94 (Adoption of Standards), Annex I

(*Application for approval of a Plan of Work to obtain an exploitation contract*) and Section III, Annex IV (*Environmental Impact Statement*). Therefore, the defined term must be fit for purpose in all of the above contexts and it is critical that the definition is limited to "*material*" consequences.

- Therefore, we consider that it is necessary to clarify a relevant threshold that is consistent with an outcome-based approach.
- We note that under our proposed amendment, a cluster of small, separate, non-material consequences may combine to cause a cumulative material environmental effect, which would still constitute an "*Environmental Effect*" captured by the definition.

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Schedule – "Material Change".

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.

"Material Change" means a substantial or significant change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, ~~{changes to harmful effects of activities on the Marine eEnvironment, al-effects-or-effects-on-stakeholders}~~ the availability of new knowledge or technology and changes to operational management that are to be considered in ~~the~~ light of the Guidelines.

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

- We generally support the definition of "Material Change", subject to the amendments proposed above.
- We have proposed an amendment to the definition of "Material Change", with the effect that it no longer includes "any" or "every" change, but only "substantial" or "significant" changes.
- Without the inclusion of this threshold, the defined term will not operate as intended. The threshold we have proposed is similar to those in "Material Change" definitions in construction, mining, oil and gas contracts.
- We note that Material Change is used as a defined term in the following Draft Regulations: 25(1), 25(2), 25(6), 57(2)-(4), 58(1), 58(3), 59(5) and 60(1). The

definition should be crafted in light of how it is intended to be used in the regulatory framework.

- With respect to other proposed amendments, we have proposed to amend "*environmental effects*" to more accurately reflect the standard used in the Convention, that is "*harmful effects of activities on the Marine Environment*". We consider that "*environmental effects*" is too broad.
- As for "*effects on stakeholders*", we consider that this consideration is too broad, and is not in keeping with the Convention.
- We consider that generally, the kinds of stakeholders that may be concerned with a Material Change include "*adjacent coastal States*" (pursuant to Article 142 of the Convention) and persons undertaking other activities in the marine environment (pursuant to Articles 147(1) and 147(3) of the Convention). Therefore, we consider "*effects on stakeholders*" should not be included in the definition of "*Material Change*" in the Regulations as their interests are explicitly covered in other parts of the regulatory framework and the Convention.

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Schedule – "Serious Harm".

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.

*"Serious Harm" means any effect from activities in the Area on the Marine Environment which represents an **unlawful** significant adverse change in the Marine Environment determined according to the rules, regulations and procedures adopted by the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific **[Evidence]** **[Information]**.*

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

- We support the definition of "Serious Harm" in its proposed form, subject to the inclusion of the above qualifier.
- We consider that the term "Serious Harm" has a key role in the Draft Regulations and under the Convention.
- The defined term "Serious Harm" is used in Draft Regulations 4(2) – 4(5), 28(3), 50(2) and 99(1), and forms part of the defined term "Incident". We note that the defined term "Incident" is used more extensively than "Serious Harm".
- In this context and given the key role that the defined term "Serious Harm" plays in the Regulations, we consider that it is important that further detail on how "Serious Harm" is identified is provided for in Standards and/or Guidelines.

- We note that Standards and/or Guidelines for the interpretation of Serious Harm were identified to be required in the Pretoria Workshop on standards and guidelines.