

**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:

Informal Working Group – Environment.

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

Submitted by Nauru Ocean Resources Inc. and Tonga Offshore Mining Ltd.

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

Annex IV, Paragraph 1(b)

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) Provide information, based on data from, ~~as a general rule, a minimum of 15 years of~~ monitoring, in accordance with the relevant regulations, requirements of regional environmental management plans, and Standards and taking into account the relevant Guidelines, corresponding to the scale and potential magnitude of the activities, to assess the likely Environmental Effects of the proposed activities. Such effects shall be discussed in proportion to their significance. Where an applicant or Contractor considers an Environmental Effect to be of no significance, there should be sufficient information to substantiate such conclusion, or a brief discussion as to why further research is not warranted;

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

- We consider that a 15-year minimum monitoring requirement is *ultra vires* to the Convention and the existing regulatory framework for exploration, including the exploration contracts granted to Contractors and the Commission’s Recommendations.
- A 15-year minimum requirement also does not represent best practice or resemble similar regulatory requirements in terrestrial mining or offshore oil and gas industries.
- We do not understand the basis of the 15-year time frame. The Recommendations on sampling under exploration contracts recommend a three-year time frame for monitoring activities.

- We also note that the modifications to Annex IV, Paragraph 1(b) and the imposition of a minimum 15-year monitoring program may expose the ISA to liability as the requirement infringes on the contractors' legitimate expectations concerning the regime to be followed under the exploration regulations and in the preparation of a plan of work for exploitation.

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Annex IV, Paragraph 1(d)

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~~(d) Be peer reviewed by competent independent experts, before submission and include a description of the experts, their qualifications, and the results of their review.~~

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

- We are very concerned with the repeated attempts found throughout Parts IV, VI and the related Annexes that require peer review or de facto approval from independent experts prior to submitting a plan of work to the Commission.
- These requirements outsource the Commission’s explicit duties and responsibilities to the Contractors. They also invite considerable costs and delays.
- More importantly, these requirements impact the Commission’s independence and the impartiality of the procedures for preparing and assessing a plan of work. It is not clear whether the Contractors will select and pay for independent experts, and it is not clear how the Commission will handle conflicting findings.
- The Commission’s explicit role is to assess the plan of work. The Commission is best placed to ensure the process’s integrity and independent checks and balances. The Commission is able to engage independent experts on its own, should they be needed.
- We propose deleting all regulatory text requiring independent expert review prior to submitting a plan of work to the Commission.

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Annex IV, Paragraph 2

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2. The ~~required~~recommended format and contents for an Environmental Impact Statement is outlined below. It is intended to provide the International Seabed Authority, its member States and other stakeholders with unambiguous documentation of the potential Environmental Effects based on the Best Available Scientific Evidence and Best Available Techniques on which the Authority can base its decision, and any subsequent approval that may be granted. Further detail for each section is provided following the overview.

[...]

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

- We support the previous version of Annex IV, Paragraph 2 which specifies that the Environmental Impact Statement template is recommended, not required.
- We note that the template’s form and contents are not exhaustive. It includes omissions and gaps.
- Recommending the template is the right balance to ensure Contractors meet the minimum requirements but does not prevent them from including further content.

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Annex IV, Paragraph 13(1)

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13.1 Consultation methods

Provide a description of the nature and extent, participation and outcomes of consultation(s) that have taken place with relevant Stakeholders, and how their [substantive and relevant](#) comments have been addressed in the Environmental Impact Assessment.

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

- We support the intent of Annex IV, Paragraph 13(1). Contractors should provide a description of the nature and extent of Stakeholder consultation that occurred while preparing an Environmental Impact Statement.
- However, in accordance with our earlier textual proposals, we consider it necessary that appropriate qualifiers such as “*substantive and relevant*” should be added.

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Annex IV, Paragraph 13.3bis

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13.3bis Commission consultation

Summarize the Legal and Technical Commission’s recommendations on the Scoping Report and proposed Terms of Reference for the applicant’s environmental impact assessment submitted to the Commission, and justification for any deviation either from those submitted Terms of Reference, or from the Commission’s recommendations. [If the Legal and Technical Commission has not issued a recommendation concerning the Scoping Report and proposed Terms of Reference for the applicant’s environmental impact assessment, then the applicant is to summarize efforts taken to consult with the Legal and Technical Commission and any response received.](#)

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

- We support the process and framework contained in Annex IV, Paragraph 13.3bis, specifically the Commission’s role in providing feedback and recommending a scoping report and proposed terms of reference for the Environmental Impact Assessments (EIAs).
- However, some Contractors have already prepared scoping reports for their EIAs, as required by their exploration contracts. These Contractors sought feedback from the Commission during this process. Given the absence of adopted exploitation regulations, the Commission was unable to provide feedback.

- We have proposed appropriate amendments to Paragraph 13.3bis to protect Contractors who, in the absence of a Commission Recommendation, have already prepared a scoping report and commenced an EIA.
- We consider such contractors have not acted prematurely – rather, they have acted in accordance with their exploration contracts and approved programmes of activities.