

**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.

Draft Reg. 44(1).

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. The Authority, sponsoring States, the Enterprise, Contractors and States competent for vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority shall each, within their respective competence plan, adopt, implement and modify measures necessary for ensuring effective protection of the Marine Environment, including rare or fragile ecosystems, ~~all forms of marine life as well as the habitat of depleted, threatened or endangered species~~ from harmful effects directly ~~or indirectly~~ resulting from Exploitation in the Area, ~~including from shipboard processing and from transportation of minerals to inland facilities, which may include inland processing~~ in accordance with the Rules of the Authority, Standards and taking into account Guidelines referred to in regulation 45 and the applicable Regional Environmental Management Plan.

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

- The terms “all forms of marine life” and “the habitat of depleted, threatened or endangered species” are too vague as presently formulated. They are also redundant – the defined term “Marine Environment” is sufficiently wide enough to cover marine life and habitats in the Area.
- We support effective protection of the Marine Environment. However, under Article 17(2)(f) of Annex III to the Convention, the ISA’s rules, regulations and procedures can only secure effective protection from harmful effects directly resulting from Activities in the Area. Expanding their scope to encompass “indirect” effects is ultra vires with the Convention.

- Respectfully, the ISA is limited to regulating “activities in the Area.” The ISA has no jurisdiction to prescribe general obligations concerning inland facilities and inland processing of minerals transported from the Area. This is confirmed by paragraph 84 of the 2011 ITLOS Advisory Opinion - transportation, marketing, and processing of minerals recovered from the Area do not fall within “*activities in the Area*”.

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Draft Reg. 44(1)(a)(i)

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(i) Apply the precautionary approach ~~principle as reflected in principle 15 of the Rio Declaration on Environment and Development~~ and the ecosystem-based management approach to the assessment and ~~and management and prevention~~ of risk of harm to the Marine Environment from Exploitation in the Area;

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

- We consider the reference to “and prevention of risk of harm” in paragraph 44(1)(a)(i) is incorrect and the words “and prevention” should be deleted.
- All risk cannot be prevented; this would be impracticable, if not impossible.
- To align with the mitigation of risk referenced elsewhere in the draft regulations, we consider risk must be assessed and be managed within levels consistent with the ALARP principle, as set out in regulation 46bis(2)(c).
- We must ensure there is consistency in terminology relating to risk and other approaches to ensure that contractors have a clear understanding of their obligations.
- We note the Commission’s Draft guidelines on the tools and techniques for hazard identification and risk assessments (document ISBA/27/C/8) addresses matters relevant to the risk assessment and management process, including the ALARP approach.