

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> 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](mailto: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. 46bis(2)(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) An Environmental impact assessment to describe the Marine Environment ~~including Underwater Cultural Heritage~~ and predict the nature and extent of the Environmental Effects of the mining operation, in accordance with the applicable Standard, including cumulative and synergistic impacts and residual and synergistic effects also ~~considering~~ other existing and foreseen mining operations, using Best Available Scientific Evidence, Best Archaeological Practices, Best Environmental Practices, Best Available Techniques, and Good Industry Practice and taking into account, where applicable:

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

- We do not understand the rationale for including a reference to Underwater Cultural Heritage in Draft Reg. 46bis(2)(b).
- The Environmental Impact Assessment process contains multiple components and within this process, it is unclear exactly what Underwater Cultural Heritage includes – particularly where it is proposed to be a defined term with an incredibly broad remit.
- We do not consider one component should be specifically mentioned over another and all components are equal.
- We propose deleting this reference until the intersessional working group on Underwater Cultural Heritage has completed its work.

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Draft Reg. 46bis(2)(c).

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(c) The Identification of measures of the mitigation hierarchy envisaged to prevent, reduce, and control, mitigate or where possible, avoid, minimize, remediate, rehabilitate and restore or, as a last resort and if approved, offset and manage Environmental Effects ~~and risks~~ to as low as reasonably practicable, and within acceptable levels in accordance with environmental quality objectives Standards including through the development and preparation of an Environmental Management and Monitoring Plan;

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

- The proposed amendments to Draft Reg. 46bis(2)(c) do not clearly outline the Contractors’ risk management obligations.
- Contractors must have a clear understating of their obligations, so terminology used throughout the Draft Regulations should be consistent.
- We note it is not possible to prevent “risk” in general. Any reference to preventing risk in the Draft Regulations should be deleted.
- We support the inclusion of the ALARP principle – an accepted industry standard that residual risk should be reduced as far as reasonably practicable – and suggest the ALARP principle be referred to wherever the Draft Regulations require Contractors to manage Environmental Effects.

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Draft Reg. 46bis(4)(d).

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~~(d) Be subject to an independent scientific assessment prior to the submission of the proposed Environmental Impact Statement to the Authority;~~

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

- We do not support review and assessment of the Contractors’ plan of work by independent experts prior to the Commission’s own assessment.
- This approach will impose unfair costs and burdens on the Contractors.
- The approach also infringes on the Commission’s own role. The Commission has the explicit role under the Convention to assess the plan of work, including its various components.
- Furthermore, the suggested clause does not define the term “independent” and does not address situations where an “independent” assessment contradicts the Commission’s own findings.
- We support the Commission’s clear mandate to assess the plan of work itself. If the Commission requires outside expertise, it may appoint its own experts.
- We strongly support the deletion of all references in the draft regulations whereby the Contractor is required to have elements of the plan of work be subject to independent scientific assessment prior to the submission of the plan of work to the Authority.

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Draft Reg. 46bis(5).

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5. A Contractor shall review periodically, as indicated in the Environmental Management and Monitoring Plan, impact assessments previously performed, including cumulative and synergistic impacts of activities covered by the assessment and revise them thereafter whenever a material change in the mining operation has occurred, there is relevant new information or when the review indicates that such changes warrant a revision.

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

- We support the interval period for review of the Environmental Management and Monitoring Plan, as contained in Draft Reg. 58.
- However, Draft Reg. 46bis(5)'s requirement to conduct such reviews whenever a change in mining operation occurs is overly burdensome and inconsistent with Draft Reg. 58.
- If the Commission wishes to maintain the modifications to Draft Reg. 46bis(5), we suggest it add a materiality provision to ensure the procedures outlined elsewhere in the Regulations are followed.
- We therefore propose the term “*material*” is included in Draft Reg. 46bis(5).

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Draft Reg. 46bis(8)(d)

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(d) Record and address, in the scoping report and Environmental Impact Statement respectively, ~~any~~ substantive and relevant Stakeholder comments received.

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

- We support requiring Contractors to clearly demonstrate engagement with and consideration of Stakeholder comments during the Stakeholder consultation period.
- However, not all such comments will be relevant and necessary to address.
- Draft Reg. 46bis(8)(d) places an unworkable burden on the Contractors to address any Stakeholder comments received.
- We propose replacing the term “any” with “*substantive and relevant.*”

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Draft Reg. 46bis(9)(c).

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(c) Identify substantive and relevant comments received through public consultation on the environmental impact assessment and how they have been addressed;

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

- We support the addition of the term “*substantive*” to Draft Reg. 46bis(9)(c) and suggest adding the term “*relevant*.”
- We suggest that without the inclusion of the word “*relevant*”, the Contractor will be required to address all substantive comments received even if such comments are not relevant to the environmental impact assessment.

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Draft Reg. 46 bis(alt)(7)

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7. The applicant or Contractor shall take into account the Commission’s recommendations under this regulation before proceeding with an environmental impact assessment process. The Commission’s recommendations shall be considered authoritative, and any environmental impact assessment that follows the Commission’s recommendations shall be deemed compliant with the regulations.

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

- We support the process contained in Draft Reg. 46bis(alt), as it outlines a clear roadmap for the Commission to review and recommend changes to the scoping report prior to a Contractor commencing the Environmental Impact Assessment process.
- Our suggested revisions are intended to elevate the Commission’s recommendations by ensuring they reflect an approved roadmap for a Contractor to follow when obtaining a compliant EIA.