

**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:

OEWG

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

Republic of Nauru

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

Regulation 81

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 system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement, ~~consistent with Articles 154, 160(2) and 162(2)(o) of the Convention, and unless otherwise decided by the Council,~~ shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and at intervals thereafter as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area.

2. The Council, based on the recommendations of the Commission, ~~and in consultation with Contractors~~ and in consultation with Contractors, may revise the system of payments ~~in the light of changing circumstances and~~ following any review under paragraph 1 above, ~~taking into account the economic viability of the project~~ save that any revision shall only apply ~~[to existing exploitation contracts by agreement between the Authority and the Contractor] [after five years of commercial production have been completed under that exploitation contract].~~

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

We do see the rationale or basis for the addition of “consistent with Articles 154, 160(2) and 162(2)(o) of the Convention” etc., to the text in paragraph one, and suggest that it is deleted.

On paragraph 2, we see as a fundamental principle of good regulatory practice that where a material change is proposed to a regime, those who are likely to be impacted directly by such change should be consulted. Consequently, we consider the text “and in consultation with Contractors” should be retained. The final decision on any change

will rest with the Council, but the Council should take into account the views of contractors in particular. This is evident in many mining jurisdictions where there are proposed changes to a fiscal regime or practice.

The text originally proposed in paragraph 2 relating to existing exploitation contracts, aligns with that of paragraph 1(c), Section 8 of the 1994 Agreement which states “The system of payments may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. Such changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor”.