

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION: COUNCIL -
PART III**

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 – Institutional matters

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.

Draft Regulation 2(2)

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. These regulations, and any decision-making thereunder, shall be applied in conformity with the principles governing the Area embodied in Section 2 of the Part XI ~~and in Part XII~~ of the Convention.

2. **Recognizing that the rights in the Resources of the Area are vested in humankind as a whole, on whose behalf the Authority shall act,** Exploitation in the Area shall be carried out for peaceful purposes and for the benefit of humankind as a whole, taking into particular consideration the interests and needs of developing States, ~~and~~ **while** ensuring the effective protection of marine environment **from harmful effects which may arise from such activities in the Area [consistent with Article 145 of the Convention] including [biological diversity and ecological integrity] [its flora and fauna]**

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

- We consider that the additional language at the end of Draft Regulation 2(2) is unnecessary and that the regulations should not unnecessarily add to the language and expand Article 145. Instead, this paragraph should reflect the requirements of Article 145.

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Draft Regulation 2(3 alt 1) and (3 alt 2)

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~~[3 alt 1. Exploitation shall not be authorized in the Area unless, inter alia, phase one and two Standards and Guidelines are adopted, and effective protection of the Marine Environment from harmful effects can be ensured consistent with Article 145 of the Convention [and including biological diversity and ecosystem integrity][and effective protection of human life in accordance with Article 146 of the Convention].~~

~~[3 alt 2. Exploitation in the Area shall not commence until:~~

~~(a) the legal framework intended for the effective protection and preservation of the Marine Environment has entered into force [and the Authority has adopted an environmental policy];~~

~~(b) the implementation of [Target 3 of] the Kunming-Montreal Global Biodiversity Framework is well on track in the area beyond national jurisdiction; and~~

~~(c) scientific evidence demonstrates that Exploitation will be conducted in such a manner so as: not to cause significant and harmful changes to the Marine Environment and its resources, to effectively protect and preserve the Marine Environment pursuant to article 145 and Part XII of UNCLOS [including biological diversity and ecosystem integrity], and not to impede the full implementation of [Target 3 of] the Kunming-Montreal Global Biodiversity Framework in the area beyond national jurisdiction.~~

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

- We oppose the attempt in Draft Regulation 2(3 alt) to make authorization of exploitation dependent on the adoption of certain Standards and Guidelines as well as vaguer notions of effective protection. This is particularly the case in regard to language that suggests there may be other things preventing authorization (“inter alia”) that are not listed in the paragraph.
- At most, it may be justifiable to link commencement of Commercial Production (as opposed to authorization) to certain milestones in relation to conclusion of appropriate

Standards and Guidelines, as is the present case in the preparation of standards and guidelines in a three phase approach.

- Paragraph 15(c) of the 1994 Agreement makes clear that the Authority must consider and provisionally approve applications for plans of work for exploitation once they are submitted. That requirement to provisionally approve exploitation cannot be overridden by these regulations.
- In relation to paragraph 3alt1, we also note that “phase one and two” are not clearly defined terms and so would not provide definite milestones here. Similarly, mere reference to the requirements under Article 145 are not sufficiently clear to establish a threshold requirement for authorising exploitation.
- In relation to paragraph 3alt2, we consider that these requirements are not found in or allowed under the Convention and are also insufficiently concrete in relation to when they would be satisfied. For example, it is not clear what it means for the Kunming-Montreal Global Biodiversity Framework implementation to be “well on track”.
- As such we propose deleting these alternatives to paragraph 3.

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Draft Regulation 2(4 alt)

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.

4 alt. The following principles and approaches shall guide the application of these regulations:

(a) Intergenerational equity.

(b) Precautionary ~~principle or~~ approach **as appropriate**.

(c) Ecosystem ~~{based management}~~ approach.

(d) Polluter pays principle.

(e) **Open** access to ~~{non-confidential}~~ data, ~~{and}~~ information **and knowledge including relating to the protection and preservation of the Marine Environment**.

(f) Transparency, **inclusivity** and accountability in decision-making ~~{(vii)}~~ **including effective stakeholder involvement and** public participation;

(g) The use of Best Available Scientific Information;

(h) The use of relevant traditional knowledge of Indigenous Peoples and local communities where available.

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

- We oppose the inclusion of references to the “precautionary principle” in Draft Regulation 2(4 alt). The “precautionary principle” remains a contested concept in the development of these regulations. There are varying approaches to what it means, what it requires, and what its status is under international law. Instead, the Draft Regulations have used the term “precautionary approach”.
- The use of the term “precautionary approach” is also consistent with the 2011 ITLOS Advisory Opinion, paragraphs 125-135 of which refer to the term “precautionary approach” and not “precautionary principle”.