

**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 4(3) and (4)

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.

[Facilitators’ Note: the outcomes of the intersessional working group focused on coastal states will further inform this DR4 (and other references to ‘coastal States’ contained in this IWG’s portions of the regulations). We have nonetheless reflected some comments received on the topic in this latest draft text. In this regard, the view was expressed that identification / definition of coastal States with relevant interests should not be a function left to the discretion of the Contractors or the Secretary-General. It was also suggested that the Regional Environmental Management Plan could be a relevant tool for making such identification.]

[...]

3. Contractors shall take all measures **required and** necessary to ensure that their activities are conducted so as not to cause Serious Harms ~~harmful effects~~ to the Marine Environment, including, but not restricted to, pollution, damage to the flora and fauna, **interference with the ecological balance of the Marine Environment including ecosystem structure, function and resilience** and other hazards to the Marine Environment in areas under the jurisdiction or sovereignty of coastal States, and that such Serious Harms ~~harmful effects or pollution~~ arising from **Incidents or** activities in its Contract Area do not spread into areas under the jurisdiction or sovereignty of a coastal State.

4. Such measures by Contractors shall include:

(a) consulting with any potentially affected coastal State when required and **in accordance with Article 142 of the Convention, prior to submitting an application for approval of a Plan of Work**]; and

(b) maintaining throughout the term of the contract:

- (i) monitoring of potential transboundary impacts,
- (ii) accurate and precise recording of the operational area, and
- (iii) consultations with any potentially affected coastal State,

with a view to ensuring that the rights and legitimate interests of coastal States are not infringed.

5. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor or the Enterprise ~~is likely to could~~ cause ~~Serious harm~~ ~~Harm~~ or a threat of ~~sSerious h Harmful effects~~ to its coastline or to the Marine Environment under its jurisdiction or sovereignty, ~~or may result in exploitation by the Contractor of resources lying within national jurisdiction without the relevant State's consent~~, shall notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the ~~[Commission]~~, and the Contractor and its sponsoring State or States or the Enterprise, of such notification. The Contractor and its sponsoring State or States or the Enterprise shall be provided with a reasonable opportunity to examine the evidence, if any ~~provided by the coastal States as the basis for its belief~~, and submit their observations thereon to the [Secretary-General] in the shortest possible time. *[Facilitators' note: the references to the Commission and the Secretary-General in this paragraph may be re-visited when the organisational structure for the inspection and compliance function of the Authority has been determined].*

6. Regulation 4(5) shall apply *mutatis mutandi* to any State with grounds for believing that such ~~sSerious harm Harm~~ or threat of ~~sSerious harm Harm~~ may be caused in any location by an activity under a Plan of Work, ~~and the procedure established in regulation 4(7) shall also apply.~~

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

- We propose to replace “harmful effects” in Draft Regulation 4(3), (5) and (6) with “Serious Harms”.
- “Serious harm” is a term defined in the Draft Regulations, used throughout, and has a clear meaning. It is a key concept for setting out the legal level of protection that Contractors and the Authority must accord to the Marine Environment. It’s use here would ensure a consistent and coherent approach is taken across the Draft Regulations.
- In relation to Draft Regulation 4(4)(a), we note that Article 142 of the Convention specifies that consultations with relevant coastal States are required in specific circumstances. We propose a minor amendment to this paragraph to ensure it reflects the obligations under Article 142.

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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 4(7)

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.

~~7. If the [Commission] determines, in accordance with the relevant Standards and taking into account Guidelines, that there are clear grounds for believing that, as a result of the Contractor’s operations:~~

~~(a) Serious Harm or the threat of Serious Harm to the Marine Environment is likely to occur or has occurred, the Secretary General shall notify the Sponsoring State, and [the Commission] shall recommend that the Council issue an emergency order, which may include an order for the suspension or adjustment of operations, pursuant to article 165(2)(k) of the Convention and take all necessary measures to prevent Serious Harm to the Marine Environment. Such recommendation shall be taken up by the Council on a priority basis. Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with regulation 28(3); or~~

~~(b) other harmful effects, or threat of harmful effects, to the Marine Environment is likely to occur or has occurred, the Secretary General shall notify the Sponsoring State, and the [Commission] shall recommend that the Council issue a compliance notice pursuant to regulation 103 or direct an inspection of the Contractor’s activities pursuant to article 165 (2) (m) of the Convention and Part XI of these regulations. [Facilitators’ note: the reference to the Commission in this paragraph may be re-visited when the organisational structure for the inspection and compliance function of the Authority has been determined. It has also previously been proposed that the text contained in this paragraph (7) may be better located in Part XI of the Regulations, pertaining to Inspections, Compliance and Enforcement].~~

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

- We consider Draft Regulation 4(7) is unnecessary in a regulation that relates to the rights and obligations of coastal States. The subject matter of this paragraph is environmental protection which is already covered by other regulations.
- Draft Regulation 4(5) already empowers coastal States to notify the Secretary-General regarding any concerns they may have regarding harm to the marine environment. Once such a notification is received it is up to the Authority to appropriately apply the regulations regarding the protection of the environment and enforcement.