

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> 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](mailto: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 Regulations 10(4) and (5)

**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. Should there be more than one application for the same area and same Resource category, [for a potential applicant has confirmed their intention to apply for approval of a Plan of Work pursuant to Regulation 10(2)] the ~~Commission~~ Secretary-General [Secretary General] shall ~~make recommendations to the Council, and the Council shall~~ determine which applicant has preference and priority in accordance with article 10 of annex III to the Convention ~~and section 1, para. 13 of the annex to the Agreement, and taking into account any relevant Guidelines, and in case of any dispute, it shall be submitted to the Commission to make recommendations, upon which the Council shall make the decision.]~~ The Secretary General shall notify the members of the Authority of the determination made, if any, as to whether the applicant has preference and priority.~~

~~5. Where an application concerns a Reserved Area, the Enterprise shall be given an opportunity to decide whether it intends to carry out activities in the area in accordance with article 9 of annex III to the Convention, [and section 2 of the annex to the Agreement].~~

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

- We consider that the Secretary-General is the most appropriate person to make a determination under Draft Regulation 10(4) regarding priority given this is an objective determination of which applicant has an approved plan of work. As such, there is no need to require this to go through the Commission and Council.
- We also remain of the view that the proposed Draft Regulation 10(5) is inconsistent with Article 9 of Annex III of the Convention, and the overall approach as to how the Enterprise’s right of first refusal is intended to operate. We strongly propose this paragraph be deleted.

- Article 9(1) of Annex III of UNCLOS requires the Enterprise to make a decision regarding whether it intends to carry out activities in a reserved area “within a reasonable time” of a qualifying applicant notifying the Authority that “it wishes to submit a Plan of Work” regarding that reserved area for approval. After that point in time has passed, there is no right for the Enterprise to later indicate that it wishes to undertake activities in the proposed contract area.
- It would not be consistent with this Article to allow the Enterprise an additional opportunity to take over a reserved area when the applicant moves from exploration to exploitation and submits an exploitation application. This would come after significant investment by an applicant, including collection of data and preparation of an application. It would be unfair for applicants and Contractors and put their investment at risk given the possibility of arbitrary and inequitable outcomes.
- We can also accept the other deletions proposed to these paragraphs.