

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 11(1)

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 Secretary-General shall, within seven Days after determining that an application for the approval of a Plan of Work is ~~ready to progress pursuant to complete under~~ regulation 10:

(a) ~~Taking into account the confidentiality of the data, place [alt 1. the Environmental Plans and any information necessary for their assessment] [alt 2. the application and all non-confidential documentation submitted and associated with it, including any supporting material] [alt 3. the Plan of Work and the accompanying plans and information] [as well as the non-confidential parts of the test mining study] on the Authority’s website for a period of 60-90 Days, and notify and invite members of the Authority, [relevant] adjacent coastal States, [and any other States adjacent to the Exploitation Area when they are potentially the most affected States], Stakeholders, [and the general public] to submit comments in writing within 90 days, in accordance with the relevant Standards and taking account of the relevant Guidelines.~~

~~[(b) Request the Commission to provide its comments on the Environmental Plans [and the non-confidential parts of the test mining study] within the 90 Day comment period.] [Facilitator’s note: proposals to delete this paragraph (b) noted potential conflict with DRs 11(4) and 12, and queried the rationale for the LTC reviewing the application once in this 90-day period, and then again afterwards]~~

~~[(c) [Based on the assessment of the Commission, if necessary,] Establish an independent review team, making use of the roster of competent independent experts, if any, to provide comments on the Environmental Plans within the comment period.]~~

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

- We consider that the first alternative in Draft Regulation 11(1)(a) is the most appropriate option for this text given its clear and simple drafting and that it would ensure appropriate information is made public without requiring onerous review and disclosure of documentation.
- We query the benefit of referring to “members of the Authority”, “relevant adjacent coastal States” and also “any other States adjacent to the Exploitation Area when they are potentially the most affected States”. Given the overlapping nature of these terms, we propose amendments to remove duplication.
- We also note that this paragraph will need to be considered again once the informal working group on stakeholder consultation and engagement completes its work.
- In relation to Draft Regulation 11(1)(b), we consider that this paragraph is not necessary given that the Commission will review the Environmental Plans, taking into account all comments received. Thus, it would be duplicative to also require the Commission to provide comments under Draft Regulation 11(1)(b).
- In relation to Draft Regulation 11(1)(c), we consider it is unnecessary and would usurp the role of the Commission itself. It is the Commission that is intended to be the Authority’s body of experts that is able to evaluate Environmental Plans. There should be no need for the Secretary-General to establish a separate and additional review team to undertake this work. As such, sub-paragraph (1)(c) should be deleted. We also note Draft Regulation 11(1) relates to actions the Secretary-General must take within seven days of determining the application is ready to progress. In our view this is insufficient time for consideration of whether any sort of independent input is required.
- We can also accept the other deletions proposed to these paragraphs.

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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 Regulations 11(2) and (2 bis)

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.

2. The Secretary-General shall, within seven Days following the closure of the comment period, provide all submissions received, ~~from members of the Authority, relevant adjacent coastal States, Stakeholders, the general public, the Commission,~~ and any comments from ~~[the independent review team and]~~ the Secretary-General to the applicant ~~for its consideration~~ and publish all submissions and comments provided on the website of the Authority.

2 bis. The applicant shall consider the comments provided pursuant to paragraph ~~(2)~~ (1) and ~~may shall~~ may, as appropriate, revise the [alt 1. Environmental Plans] [alt 2. application] [alt 3. Plan of Work and the accompanying plans and information] or provide responses ~~in reply~~ to the [relevant and][substantive] comments, ~~as to how they were taken into account~~ and ~~[shall][may]~~ may submit any ~~revised plans revisions and~~ responses to the ~~[alt 1. Secretary-General]~~ [alt 2. Commission]...[alt. continuation of 2 bis...][within a period of 30 Days following the close of the comment period ~~unless otherwise decided or such longer period as determined~~ by the Secretary-General ~~after considering~~ [alt 1. following a request by the applicant][alt 2. after consulting with the applicant] ~~before the initial time period [of 30 days] expires for an extension of the period due to the time required~~ [alt. on the basis that it requires more time] to revise the plans or responses. Notice of the extension of the period shall be posted on the Authority’s website.]

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

- Consistent with our intervention on Draft Regulation 11(1)(c), we propose to remove the reference to the “independent review team” from Draft Regulation 11(2).
- In relation to Draft Regulation 11(2 bis), we consider that whether or not an applicant submits revisions or responses will depend upon the contents of the comments received. As such, “may” should be used in this paragraph not “shall”.

- We also consider that it is appropriate to allow the applicant to request extensions and this should be clear. As such we prefer the first alternative in the second part of Draft Regulation 11(2 bis).
- We can also accept the other deletions proposed to these paragraphs.

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

Draft Regulations 11(4) and (5)

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~~4. Notwithstanding the provisions of regulation 12(2), the Commission shall not consider an application for approval of a Plan of Work until the [alt 1. Environmental Plans have] [alt 2. application has] [alt 3. Plan of Work and the accompanying plans and information have] been published and if necessary, revised in accordance with this regulation.~~

5. The Commission shall prepare a report on the [alt 1. Environmental Plans] [alt 2. application] [alt 3. Plan of Work and the accompanying plans and information], which shall be published on the Authority’s website, and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15. The report shall include:

- (a) details of the Commission’s determination under regulation 13(4)(e);
- (b) details of the comments and responses submitted under paragraphs (1) and (2bis);
- (c) any further information provided by the Secretary-General under paragraph (2);
- ~~(d) any amendments or modifications to the [alt 1. Environmental Plans] [alt 2. application] [alt 3. Plan of Work] recommended by the Commission under regulation 14 {and changes subsequently made to application documents by the applicant};~~
- (e) the relevant rationale for the Commission’s determination, with specific explanation as to any comments or responses that are disregarded.

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

- We consider that Draft Regulation 11(4) should be deleted as it is unnecessary and has no basis in the Convention. Applications will contain a number of elements of which Environmental Plans are only one. There is no reason to delay the Commission's consideration of applications pending potential revisions to the Environmental Plans. While the Commission may certainly wait before it closely considers the Environmental Plan itself, it should expeditiously consider the remaining aspects of application.
- If Draft Regulation 11(4) is retained, it should refer to Environmental Plans only given that they are the subject of Draft Regulation 11.
- Consistent with Draft Regulation 11 being focused on Environmental Plans, we consider that Draft Regulation 11(5) should only refer to Environmental Plans and not other documentation associated with the application.

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Draft Regulation 11(6)

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~~{6. In preparing its report under paragraph (5), the Commission shall [alt. may] seek advice from competent independent experts as necessary. In such case, the Commission shall clarify the necessity of advice from experts and seek prior approval of the Council. The experts shall be selected and appointed in accordance with relevant Guidelines [alt. Annex [tbc].}~~

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

- We consider that the Commission should not be forced to seek independent advice in relation to all Environmental Plans that it receives. Instead, Draft Regulation 11(6) should empower the Commission to seek such advice when it considers it appropriate to do so. We also suggest that the selection of experts should be guided by Guidelines rather than material set out in an Annex to the Draft Regulations.
- We can also accept the other deletions proposed to these paragraphs.