

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 Regulations 12(1bis) and (1 ter)

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.

~~1bis. Subject to paragraph (1 ter) and to regulation 11(4),~~ The Commission shall commence the consideration of an application ~~at its next meeting after receipt of the application [alt. within 30 days of its receipt of the application] [provided that the notifications and information pursuant to regulation 11(1)-(2 ter) have been circulated at least 30-90 Days prior to the commencement of that meeting of the Commission.]~~*[Facilitator’s note: this has been proposed to move here, from DR9. One submission notes in relation to this paragraph (1 bis), that regulation 11(4) (cross-referenced) actually prevents the LTC from considering the application until after the documents have been published for consultation for 90 days in any event – hence the proposal to delete the wording from ‘provided...’ onwards.]*

~~[1 ter. The Commission may defer consideration of an application to a subsequent meeting [alt. suspend further consideration of such application and resume consideration at its subsequent meeting] if it considers the application to be overly complex if the complexity of the applications so requires.]~~

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

- We oppose linking the Commission’s consideration of an application for a plan of work to its twice yearly meetings as proposed under Draft Regulation 12(1bis). There is no reason that the Commission should wait until its scheduled meeting to commence its consideration of applications. This would only invite regulatory delay and be unduly burdensome to both the Contractors and the Commission. Instead, we propose the Commission start its consideration within 30 day of its receipt of the application.
- The Commission is empowered to work intersessionally. It should make use of this power to ensure the efficient processing and consideration of applications and representations by applicants.

- While one submission has noted Draft Regulation 11(4) purports to prevent the Commission from considering applications until the consultation period regarding Environmental Plans is completed, as per our intervention on that paragraph, that paragraph should be deleted. It is unnecessary and has no basis in the Convention.
- We also consider that Draft Regulation 12(1 ter) is inconsistent with Article 6 of Annex III of UNCLOS and so propose to delete it and the reference to it in Draft Regulation 12(1bis). Article 6 requires the Authority to take up for consideration proposed plans of work in the order in which they are received. Draft Regulation 12(t ter) is also ambiguous and would create uncertainty regarding what it means for an application to be “overly complex”.
- As an expert body, the Commission should not need to defer its consideration of an application due to complexity and should resort to powers at its disposal, including the use of independent experts, to assist its consideration.

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Draft Regulation 12(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.

2. The Commission shall consider applications expeditiously and shall ~~endeavour to~~ submit its ~~reports and~~ recommendations to the Council no later than ~~[alt 1. 120] [alt 2. 180][alt 3. 275]~~ Days from whichever date occurs later out of:

(a) the close of the comment period, in accordance with Regulation 11(1)(a), or

(b) the date of submission of a revised plan, in accordance with Regulation 11(2 bis), ~~or~~

~~(c) the date the Commission receives additional information or amendments to the Plan of Work requested by the Commission under regulation 14.~~

~~2bis. If [an application is overly complex] or incomplete information has been submitted by the applicant, the Commission may delay its reports and recommendations under regulation 12(2) by a further 90 Days.~~

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

- We consider there is no need to insert “endeavor to” in Draft Regulation 12(2). The Commission should be required to submit its recommendations by a definitive deadline and not have a vague timeline which gives no clarity for applicants. We also consider that a 120 day period is sufficient for the Commission to consider each application.
- We also consider that Draft Regulation 12(2)(c) is unnecessary as Draft Regulation 14(3) explicitly extends the relevant timeframe for Commission consideration by the amount of time an applicant is given to provide additional information.
- We can also accept the other deletions proposed to these paragraphs.

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Draft Regulations 12(3 bis) and (3 bis alt)

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~~{3 bis. The Commission in considering a proposed Plan of Work may seek advice and reports from competent independent experts on any matters considered to be relevant, as necessary.}~~

~~3 bis alt. In the case the Commission evaluates that there are aspects of the proposed Plan of Work that are not covered entirely by its own internal expertise, the Commission shall nominate at least three competent independent experts selected on the basis of their significant experience or record of publications in a particular deep sea environment or technology sector, to review the application and provide comments to the Commission to inform their consideration of the proposed Plan of Work.~~

~~{Facilitators’ note: the points raised in paragraphs (3 bis) and (3 bis alt.) may be covered sufficiently by regulation 11(6), if this is retained.}~~

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

- We consider that Draft Regulation 12(3 bis) and (3 bis alt) are unnecessary. There should not be a need for the Commission to seek external advice from experts. It is the Commission that is intended to be the Authority’s body of experts that is able to evaluate applications for Plans of Work. Adding additional outside experts would only delay the Commission’s consideration and undermine the role of the Commission.
- If text is to be retained, we prefer Draft Regulation 3 bis.

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Draft Regulation 12(3) and (3 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.

3. The Commission shall, in considering a proposed Plan of Work, apply the **Convention, the Agreement, and the Rules of the Authority** in a uniform and non-discriminatory manner, **and may not recommend approval of a Plan of Work that does not comply with any mandatory these requirements contained therein.**

~~3 alt. The Commission shall, in considering a proposed Plan of Work, apply the Convention, the Agreement, and the Rules of the Authority in a uniform and non-discriminatory manner, and [ensure its compliance with] [shall have regard to] apply the principles, policies and objectives relating to activities in the Area [as provided for in [the Convention,] [the Preamble,][and Part I of these regulations],[and in particular the manner in which the proposed Plan of Work] [contributes to realizing benefits for][is in the interests of] humankind as a whole [in accordance with decisions of the Council and Assembly]] including in ensuring the fair and equitable sharing of benefits] [and ensuring the effective protection of the marine environment], and may not recommend approval of a Plan of Work that does not comply with these requirements~~

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

- We consider a minor change is needed to Draft Regulation 12(3) so that it appropriately captures the nature of the various aspects of the documents it refers to. In particular, it is not clear what “these requirements” means in this context, so we propose to change this to refer to the requirements contained in the documents referred to.
- In relation to Draft Regulation 12(3 alt), we consider this alternative to paragraph 3 is overly detailed, wordy, unclear and duplicative. The original paragraph 3 already specified all of the relevant sources of requirements that applications need to satisfy. There is no need to set each of the elements of these documents out in this paragraph.

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Draft Regulations 12(4)(a)ter, (b), (b) bis

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4. In considering the proposed Plan of Work, the Commission shall take into account:

[...]

~~[(a)ter. Any advice or reports received from any competent organ of the United Nations or of its specialized agencies or any international organizations with [alt 1. competence in] [alt 2. relevance to] the subject-matter;]~~

~~[(b) Any concern raised by a ~~[relevant] adjacent coastal State~~ States adjacent to the contract area likely to be affected ~~[likely to be affected]~~ with respect to the application;]~~

~~(b) bis. Reports from the Finance Committee upon matters within its competence, including:~~

~~(i) assessment of the economic benefits to be derived from the activities proposed in the application;~~

~~(ii) advice as to securing optimum revenue for the Authority;~~

~~(iii) the administrative budget required to manage a contract if awarded, and the proposed annual reporting fee to be levied pursuant to regulation 84;~~

~~(iv) any recommendation regarding the amount or format of the environmental performance guarantee; and~~

~~(v) advice as to whether the applicant would be subsidized so as to be given an artificial competitive advantage with respect to land-based miners.~~

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

- We note that the phrase “relevant adjacent coastal State” in Draft Regulation 12(4)(b) is not defined and is unclear in terms of what States it captures. Absent a clear definition, we propose deleting the sub-paragraph or using the phrase “States adjacent to the contract area likely to be affected” which is used in Draft Regulation 33(2) in the current President’s Text.
- We also query whether it is necessary for the Commission to consider the matters referred to in Draft Regulation 12(4)(b)(i), (ii) and (iii).
- In relation to sub-paragraph (i), the reference to “economic benefits” is unclear and would not be specific to individual applications.
- Similarly, the reference to “optimum revenue” in sub-paragraph (ii) applies a concept from Article 13 of Annex III of the Convention – which relates to the overall objectives of the Authority when adopting RRP for financial contracts. This concept is not relevant to the application of those RRP to the consideration of individual applications and the terms of their contracts.
- In relation to sub-paragraph (iii), the Council should not be setting applicant-specific annual reporting fees. This would not only create further work for the Council but also inappropriately discriminate between Contractors. Under Draft Regulation 84 the Council should be setting a single annual reporting fee for all Contractors.

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Draft Regulations 12(4)(b ter), (c) and (c) bis

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~~(b ter.) Any advice or reports sought by the Commission or the Secretary General from competent independent experts persons in respect of the application [the Environmental Plans] [environmental matters] to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;~~

~~(c) The Any previous operating record of responsibility of the applicant [including in relation to mining activities within other jurisdictions], as well as the applicant’s performance during the exploration stage, including the quality of annual reports and baseline data, and the results of test mining activities];~~

~~{(c) bis. The previous operating record of the Sponsoring State(s), and the Sponsoring State(s) technical resources and enforcement capabilities to monitor and enforce the applicant’s compliance with the Rules of the Authority;}~~

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

- Consistent with our submission on Draft Regulation 12(4)(3 bis), we do not consider it necessary for the Commission to engage outside experts. As such we propose to also delete Draft Regulation 12(4)(b ter).
- In relation to Draft Regulation 12(4)(c), we consider that there is no need for the Commission to look to applicants’ operating record regarding mining activities in other jurisdictions. It is also not clear why the Commission should be considering the applicant’s “performance” as contemplated by Draft Regulation 12(4)(c). The Commission should be focused on compliance not performance.
- In relation to Draft Regulation 12(4)(c)(bis), we consider this sub-paragraph is inappropriate as it would involve the Authority passing judgment on a sovereign State. It is not for the Authority to determine the suitability of Sponsoring States. We propose this sub-paragraph be deleted.

- We can also accept the other deletions proposed to these paragraphs.