

**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 13(1)(d) and (d 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.**

1. The Commission shall determine ~~[under consideration of]~~ ~~taking into account the relevant comments made by members of the Authority and Stakeholders, responses by the applicant and any additional information or comments provided by the Secretary General if whether~~ the applicant-proposed Plan of Work and the accompanying plans and information: *[Facilitators’ note: deleted text is covered in regulation 12 (above), and proposed regulation 13(1 bis) (below).]* [...]

(d) ~~Demonstrate that the applicant and, if applicable its parent company, legal predecessor, senior management and controlling shareholders, have~~ Has satisfactorily discharged ~~its~~ their obligations to the Authority, including having a satisfactory record of past performance both within the Area ~~[and in other jurisdictions];~~

(d alt.) *[moved from (h)]* ~~Has-d~~ Demonstrated a satisfactory record of past performance ~~both~~ within the Area ~~[and in other jurisdictions];~~

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

- We oppose the inclusion of parent companies, legal predecessors, senior management and controlling shareholders in the scope of the Draft Regulations consistent with our position that the Authority can’t expand its jurisdiction to range of other entities not party to the contract. As such we propose amendments to Draft Regulation 13(1)(d) to focus on the applicant itself.
- We also object to the proposal in Draft Regulation 13(1)(d alt) that the Commission should look to applicants’ operating record regarding mining activities in other jurisdictions. This is not appropriate or relevant to activities proposed to be undertaken in the Area and we propose this is deleted.
- We can also accept the other deletions proposed to these paragraphs.

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Draft Regulations 13(1)(e) and (e)bis.

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(e) ~~Demonstrate that the applicant has~~ ~~or can demonstrate that it will have~~ the financial and technical capabilities ~~and capacity~~ to carry out the Plan of Work, ~~meet or exceed environmental performance obligations~~ and to meet all obligations under an exploitation contract ~~according to criteria defined by the Council~~; *[Facilitators’ note: Annex III, Article 4 of the Convention requires the ISA’s RRP’s to establish qualification criteria relating to ‘financial and technical capabilities of the applicant’]*

(e)bis. Demonstrate that the applicant has or can demonstrate that it can fulfil the obligations ~~Fulfil the obligations to protect and preserve the Marine Environment in accordance with the Convention and the Agreement, and as listed out in the Rules of the Authority;~~

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

- We support the inclusion of the language “or can demonstrate that it will have” in Draft Regulation 13(1)(e). This language recognizes that financing may be contingent on approval of a Plan of Work. It is also not clear what the proposed insertion of “environmental performance obligations” is referring to. This is a new and undefined concept that has not been used previously.
- It is also not clear why reference to Council determined criteria is required here. Applications should be determined in accordance with UNCLOS, the 1994 Agreement, and the Draft Regulations. There is no reason to enable an additional layer of criteria to be imposed by the Council outside of these regulatory processes.
- In relation to Draft Regulation 13(1)(e)bis we note that the Plans of Work cannot “fulfil the obligation”, but can only demonstrate that the applicant has/will be able to fulfil the relevant obligation.

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Draft Regulation 13(1)(f)

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~~{(f) Has d~~Demonstrated the applicant has or will have the financial capabilities to carry out the proposed Plan of Work ~~economic [commercial] financial viability of the mining project.}~~

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

- We support the use of the term “financial” in Draft Regulation 13(1)(f), but note that the Convention refers to “financial capability” not “viability”. We therefore propose alternative wording to closer align Draft Regulation 13(1)(f) to the text of the Convention

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Draft Regulation 13(1)(g)

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~~[(g) Has demonstrated due diligence in relation to the accommodation of other activities in the Marine Environment. [Facilitators’ note: some more detailed original text here has been moved to/ blended with 13(4)(b)].~~

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

- We consider the proposed Draft Regulation 13(1)(g) to be too prescriptive and that its substance is already covered by Draft Regulation 13(4). As such it should be deleted.

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

Draft Regulation 13(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. In considering the financial capability of an applicant, the Commission shall determine in accordance with Standards, and taking into account Guidelines whether:

(a) The Financing Plan is compatible with proposed Exploitation activities; and

(b) The applicant is ~~for~~ will be} capable of committing ~~for~~ raising} sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any exploitation contract, including:

(i) The payment of any applicable fees and other financial payments and charges in accordance with these regulations ~~in order to ensure that the project will benefit humankind as a whole;~~

(ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan ~~and to restore and remediate the affected Marine Environment in case of a significant;~~

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

- We support the inclusion of the wording “is or will be” in Draft Regulation 13(2)(b). This wording recognises that financing may be contingent on approval of a Plan of Work and so at the time of the application may not have the relevant financial resources but will have the ability to obtain them.
- We consider that Draft Regulation 13(2)(b)(i) requiring that the relevant payments shall benefit humankind as a whole is too broad. Note also that the projects will benefit

humankind not only through payments to Authority – e.g. activities will result in payments to Sponsoring State, technology transfers, and training opportunities.

- We support the deletion of the wording in Draft Regulation 13(2)(b)(ii). This regulation is not the place to impose an additional restoration/remediation obligation upon Contractors. These matters are already sufficiently covered in other regulations.
- 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 Regulation 13(3)(a)

**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.** In considering the technical capability of an applicant, the Commission shall determine in accordance with **Standards and taking into account** Guidelines whether the applicant has provided sufficient information to demonstrate it has **{or will have}**

(a) Certification to operate under internationally recognised quality control and management standards;

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

- We support the wording “has or will have” in Draft Regulation 13(3)(a). Some Contractors will be engaging the relevant technical capabilities only once their applications are approved. It would not be appropriate or fair to not also consider their ability to get such capability as part of the implementation of their plan of work once approved.
- We also note that the reference to “internationally recognised quality control and management standards” may benefit from further guidance in Standards and Guidelines.

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

Draft Regulation 13(3)(b)

**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.**

(b) The technology, knowledge, and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, ~~and~~ **taking into account** the applicable Regional Environmental Management Plan~~],~~ including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects, and to modify management and operating procedures as required to avoid ~~the potential for~~ **]** Serious Harm~~];~~

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

- We propose to remove the reference to “the potential for” from Draft Regulation 13(3)(b) given the key requirement here should be about avoiding Serious Harm not merely the potential for this to occur. There will always be potential for Serious Harm to occur and it is not possible to entirely remove this. The regulations should reflect this.



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

Draft Regulation 13(3)(e)

**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.**

(e) The capability ~~[and capacity]~~ to utilize and apply Best Available Techniques;

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

- We note that Draft Regulation 13(3) relates to what the Commission has to determine “in considering the technical capability of an applicant”. For consistency with this, we propose to delete “capacity” from sub-paragraph 3(e).

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

Draft Regulation 13(4)(a)

**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.**

(a) Provides for the effective protection of human life, and health and safety of individuals engaged in Exploitation, in accordance with the rules, regulations and procedures adopted by the Authority ~~[and by any other competent international organizations].~~

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

- We consider that the reference to “any other competent international organizations” in Draft Regulation 13(4)(a) is overly broad and lacks specificity.
- There are a range of potentially relevant international organizations that may produce rules on health and safety. This includes organizations that not all member States may be party to.
- If this reference is to be maintained, it should be limited to relevant or specific international organizations to ensure the requirements for the Plan of Work is clear.

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Draft Regulation 13(4)(b)(iv)

**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.**

(b~~d~~) Provides for Exploitation to be carried out with reasonable regard for other activities in the Marine Environment, in line with **regulation 31 and** article 87 and 147 of the Convention, including *inter alia* navigation, the laying of submarine cables and pipelines, the right to maintain and repair existing submarine cables and pipelines, fishing and marine scientific research, in accordance with the relevant Standards and taking account of Guidelines. In making such determination, the Commission shall determine if the proposed Plan of Work has demonstrated due diligence in relation to the accommodation of other activities in the Marine Environment, **including** to: [...]

(iv) identify any other activities in or adjacent to the Contract Area in accordance with Regulation 31, including marine scientific research activities, activities relating to marine genetic resources, and any relevant environmental protection measures and area-based management tools established or proposed by competent international organizations by the Authority; and

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

- We consider that the reference to “competent international organizations” lacks clarity. There are a range of potentially relevant international organizations that may produce rules on health and safety. This includes organizations that not all member States may be party to. If this reference is to be maintained, it should be limited to relevant or specific international organizations to ensure the requirements for the Plan of Work is clear.

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Draft Regulation 13(4)(c)(ii)-(v)

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~~(c) [...] For this purpose, the Commission shall determine whether the Plan of Work and accompanying plans and information demonstrate that: [...]~~

~~(ii) the Standards developed pursuant to regulation 45 will be complied with;~~

~~(iii) the objectives and measures of the applicable Regional Environmental Plan will be fulfilled;~~

~~(iv) the overarching goals and objectives set by the Authority [in its environmental policy] are complied with;~~

~~(v) the Plan of Work gives full effect to the precautionary principle [or approach as appropriate];~~

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

- We oppose the inclusion of Draft Regulation 13(4)(c)(iii) as it is unclear how the Commission will assess this beyond the Contractor providing a statement that they will comply with the Standards.
- We also oppose the inclusion of Draft Regulation 13(4)(c)(iii) as REMPs are not legally binding on Contractors. REMPs should be “taken into account” as part of the Commission’s considerations but not be presented as legally binding instruments upon Contractors and their activities.
- We oppose the inclusion of Draft Regulation 13(4)(c)(iv) as it is unclear what it means to “comply with” a goal or objective.
- We oppose the requirement for the Plan of Work to comply with the “precautionary principle” in Draft Regulation 13(4)(c)(v) as it is unclear what this means in this context and the nature of the principle is contested.

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Draft Regulation 13(4)(c)(vi alt. 1 or bis.)(A), (B)

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~~{(vi alt 1. or bis.) The assessment whether the Environmental Plans provide for the effective protection of the Marine Environment from harmful effects that may arise from the proposed activities under sub-paragraph (e), shall include by assessing whether the~~ proposed Plan of Work:

(A) will not cause Environmental Impacts to any area designated by the Authority ~~{or other relevant authority}~~ as a protected area in terms that prohibit such impact;

(B) will not gives rise to ~~a non-negligible [alt. serious] risk of~~ pollution, damage to flora and fauna, or other ~~harmful~~ Serious Harm to ecosystem integrity (i.e. ecosystem structure or function) ~~{in a manner that:~~

~~{i) impairs the ability of affected populations to replace themselves; or~~

~~{ii) degrades the long-term natural productivity of habitats or ecosystems; or~~

~~{iii) causes, on more than a temporary basis, significant loss of species richness, habitat or community types.}~~

(C) will not gives rise to ~~a non-negligible [alt. serious] risk that it will~~ undermine the protection and conservation of other natural resources of the Area.}

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

- We propose deleting the reference to “other relevant authority” in Draft Regulation 13(4)(c)(vi alt. 1 or bis.)(A) as it is unclear and unnecessary.

- It is unclear as the only authority that can relevantly designate a protected area for the purposes of the regulations is the Authority itself. Referring to “other relevant authorities” suggests other bodies may also be able to do this which would overlap and potentially conflict with the Authority’s role. It would also create ambiguity for applicants in relation to what proposed Plans of Work need to cover.
- We support the use of the standard of “Serious Harm” in Draft Regulation 13(4)(c)(vi alt. 1 or bis.)(B) which sets an appropriate, consistent and reasonable test for evaluating the effective protection of the marine environment and is more consistent with the rest of the Draft Regulation’s approach to this issue.
- We propose removing the specified additional specifications regarding serious risk and Serious Harm in Draft Regulation 13(4)(c)(vi alt. 1 or bis.)(B) (i), (ii) and (iii). This institutional regulation should not be changing the meaning of established and well-used terms such as “Serious Harm” potentially creating different and conflicting tests between different parts of the regulations.
- We consider that Draft Regulation 13(4)(c)(vi alt. 1 or bis.)(C) should use the standard of “Serious Harm” which sets an appropriate and reasonable test for evaluating the effective protection of the marine environment and is more consistent with the rest of the Draft Regulation’s approach to Serious Harm.

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Draft Regulation 13(4)(c)(vi alt. 2 or ter.)

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~~(vi alt 2. or ter.) The activities proposed under the Plan of Work will meet the overarching environmental goal of sustaining marine (benthic and pelagic) ecosystem integrity including the physical, chemical, geological and biological environment, and contributing to restoring ecosystem integrity, as well as the following environmental objectives:~~

~~(A) Prevent loss of genetic diversity, species richness, habitat or community types, and structural complexity on a long term basis;~~

~~(B) Maintain the ability of populations to replace themselves, including ensuring population connectivity and the preservation of suitable habitat;~~

~~(C) Prevent the degradation of ecosystem functions (e.g. the long-term natural productivity of habitats, elemental cycling, trophic relationships);~~

~~(D) Protect ecosystems from contamination by pollutants generated during any phase of the mining process;~~

~~(E) Maintain resilience to prevent regime shift, and to support recovery from cumulative impacts, including mining, that can affect source populations and communities, connectivity corridors, life history patterns and species distributions; and~~

~~(F) Sustain ecosystem services, including carbon sequestration, recognizing that many are yet to be discovered.~~

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

- We oppose the inclusion of Draft Regulation 13(4)(c)(vi alt. 2 or ter.) as it attempts to introduce new requirements that have no basis in UNCLOS. It is also unclear what would

it mean for the Plan of Work to “meet” an overarching environmental goal and all of the specific goals listed.



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Draft Regulation 13(4)(c)(vi)

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~~(c) [...] For this purpose, the Commission shall determine whether the Plan of Work and accompanying plans and information demonstrate that: [...]~~

~~{(vi) The effective protection referred to in sub-paragraph (e) implies that the activity will not cause, *inter alia*:~~

~~(A) Significant adverse effect on air and water quality;~~

~~(B) Significant changes in the atmosphere, the terrestrial environment, or the Marine Environment;~~

~~(C) Significant changes in the distribution, abundance or productivity or species of flora and fauna;~~

~~(D) Further jeopardy to endangered or threatened species or populations of said species;~~

~~(E) Degradation, or risk of degradation to special biological, scientific, archaeological, or historical significance;~~

~~(F) Significant adverse effect on climate or weather patterns.]~~

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

- We consider that Draft Regulation 13(4)(c)(vi) is attempting to inappropriately define and expand “effective protection” and thereby impose substantive requirements on activities. We oppose this as such requirements (if agreed) should be in the relevant regulations governing activities not in the provisions regarding how Plans of Work are to be evaluated and assessed by the Legal and Technical Commission.

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Draft Regulation 13(4)(c)

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(ce) ~~[alt 1. Demonstrates that the Environmental Plans will secure]~~ ~~[alt 2. Provides under the Environmental Plans to secure]~~ ~~[alt 3. Ensures through the Environmental Plans will secure]~~ ~~[alt 4. Demonstrates that the draft Plan of Work and the accompanying plans and information will ensure]~~ for the effective protection of the Marine Environment in accordance with the Convention and the Rules of the Authority ~~rules, regulations and procedures adopted by the Authority, in particular the fundamental principles and the relevant policies under regulation as well as taking into account~~ the objectives and measures under the applicable Regional Environmental Management Plan ~~[, and taking into account the cumulative effects of all relevant activities, and climate change]~~. For this purpose, the Commission shall determine whether the Plan of Work and accompanying plans and information demonstrate that:

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

- We equally support alt. 2 and alt 4 in Draft Regulation 13(4)(c). However, we do not consider that it would be appropriate or possible for the Commission to attempt to determine if the proposed Plan of Work “Ensures through the Environmental Plans” the effective protection of the Marine Environment as contemplated in alt 3. The Plan of Work itself cannot “ensure” this, it can only demonstrate how the Contract will put in place measures to ensure effective protection.
- We also support the addition that clarifies that REMPs shall be “taken into account”.
- 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 Regulation 13(4)

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4. The Commission shall determine if the proposed Plan of Work ~~foreseeably contributes to realizing the benefits for humankind as a whole and complies is consistent~~ with the fundamental policies and principles contained in regulation 2, and;

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

- We support the revised wording of Draft Regulation 13(4) requiring the Plan of Work to be “consistent with” the fundamental policies and principles in Draft Regulation 2 rather than complying with them.
- We however object to wording that would require the Plan of Work to contribute to realizing the benefits for the humankind as a whole specifically and directly.
- We consider that it is not appropriate for the Commission to be required to determine how each proposed Plan of Work individually contributes to the realizing of benefits for humankind as a whole under Draft Regulation 13(4).
- Instead, it is the entire regime established by UNCLOS that must fulfil this goal, for example through benefits to Sponsoring States, royalties to the Authority, transfers of technology, and the other ways specified in UNCLOS

**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 Regulation 13(5 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.**

~~5 bis. The Commission shall determine whether the draft plan of work and the accompanying plans and information demonstrate that the proposed activities will not interfere with any cultural rights or interests.~~

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

- We oppose the inclusion of Draft Regulation 13(5 bis) as the standard of “will not interfere” is too high and potentially unrealistic to be achieved by Contractors given its absolute nature.

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Draft Regulation 13(5)(e), (f)

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5. For the purposes of determining effective protection of the Marine Environment under regulation 13 (4)(c)(~~e~~) and (~~f~~), the Commission must take into account: [...]

~~(e) The importance of protecting the biological diversity and integrity of marine species, ecosystems and processes;~~

~~(f) The importance of protecting rare and vulnerable ecosystems and the habitats of threatened species;~~

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

- We consider that the wording in Draft Regulation 13(5)(e) and (f) is unnecessary and this regulation should not call out isolated aspects of the overall goals of Part XI and 1994 Agreement.
- For example, the overall aims of Part XI and the 1994 Agreement include the aim of developing the deep seabed mining industry and providing an economic benefit to humankind and member States.

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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 13(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. In assessing a Plan of Work, the Commission shall determine whether the applicant is under the effective control of the sponsoring State, according to applicable Guidelines, and whether the sponsoring State has enacted domestic legislation covering activities in the Area that:~~

~~(a) is in force and applicable,~~

~~(b) provides available recourse through the domestic legal system in accordance with Article 235(2) of the Convention, and~~

~~(c) does not contain provisions that appear to exempt liability of the sponsored entity from a cause of action that may result from its conduct of activities in the Area.]~~

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

- We object to the inclusion of Draft Regulation 13(7) as it would require the Commission to inappropriately second guess the declarations of Sponsoring States regarding sponsorship and has no basis in UNCLOS or the 1994 Agreement.
- Each member State has the sovereign right to sponsor Contractors based on the requirements set out in UNCLOS. The Commission has no basis to challenge that sponsorship.
- Draft Regulation 13 relates to the evaluation of applications for Plans of Work to ensure that applicants meet the relevant requirements for undertaking activities in the area and have the capabilities to do so. It should not be used to test Sponsoring States and their regulatory regimes.
- Sponsoring States are subject to specific requirements under UNCLOS. They should not be subjected to additional evaluation through these regulations by the Authority.