

**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 15(1bis.)

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. The Commission shall accompany any recommendation for approval made under paragraph (1) with:

(a) a summary of the deliberations of the Commission including what inputs have been taken into account and how these have been assessed, as well as divergences of opinion in the Commission, if any;

(a bis) a summary of any uncertainties inherent in the Plan of Work and how the applicant is ~~proposed~~ proposing to address ~~these~~ them;

(b) any conditions the Commission considers appropriate to deal with adverse effects of the proposed activities; and

(c) a draft Contract.

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

- We support the proposed Draft Regulation 15(1bis), with minor grammatical edits, which is a useful addition to guide the documentation to be provided along with the Commission’s recommendations.

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

Draft Regulation 15(1) and (1 alt 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.

1. Taking into account regulations ~~12(4) and~~ 13, if the Commission determines that the ~~applicant~~ ~~application~~ meets the relevant requirements, it shall ~~{alt. may}~~ recommend approval of the Plan of Work to the Council.

[1 alt 2.] If the Commission determines that the applicant meets the criteria set out in regulations ~~12(4) and~~ 13, it shall recommend approval of the Plan of Work to the Council.

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

- We support the use of the word “shall” in Draft Regulation 15(1). Consistent with UNCLOS, this regulation should not provide a discretion to the Commission where an applicant meets all of the requirements set out in the regulations.
- Article 6 of Annex III of UNCLOS requires if a proposed plan of work conforms to the relevant requirements, “the Authority shall approve them” (subject to limited exceptions). Further the Commission is limited in what it can consider when evaluating applicants by Article 165(2)(b) of UNCLOS, which requires the Commission to “base its recommendations solely on the grounds stated in Annex III...”.
- We also would support adopting the wording of Draft Regulation 15(1 alt 2) instead of the current drafting of paragraph 1.
- 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 15(2)(a alt. 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.

(a alt 2.) The Commission ~~is unable to~~ determines that the Plan of Work either alone or in combination with other activities and impacts does not ensure effective protection of the marine environment, based on the criteria set out in Regulation 13(4) ~~(c)–(e) and (f)~~, on the basis of Best Available Scientific Information, ~~and applying the precautionary approach~~

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

- While our primary position is that Draft Regulation 15(2)(a) should be used, if Draft Regulation 15(2)(a alt 2) is used we have proposed amendments to clarify the role of the Commission in considering proposed Plans of Work and their ability to ensure effective protection of the marine environment.
- The Commission should be required to determine if the proposed Plan of Work does not ensure effective protection of the marine environment before it decides to not recommend it for approval.
- We note that Draft Regulation 44(1)(a)(i) already requires the Authority to apply the precautionary approach in relevant circumstances. There is no need to repeat this requirement in Draft Regulation 15(2)(a) particularly given it is unclear exactly what this would mean in this context.

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

Draft Regulation 15(2)(a alt 3.)

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 alt 3.) Pursuant to regulation 13(4)(c) (e) and (f), the Plan of Work fails to provide for the effective protection of the marine environment from harmful effects that may arise from the proposed activities, or if the information is sufficiently uncertain or inadequate to determine, pursuant to regulation 13(4)(c) (e) and (f), that the Plan of Work provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities.~~

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

- We oppose the wording of Draft Regulation 15(2)(a alt 3).
- This proposed alternative paragraph establishes a vague and uncertain test regarding the Commission’s evaluation of proposed Plans of Work.

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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 15(2)(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.

2. The Commission shall not recommend approval of a proposed Plan of Work if:

(a) the Plan of Work does not comply with all requirements stipulated in Regulation 13;

~~(a alt 1.) the Plan of Work does not comply with, or the Commission is unable to determine whether the Plan of Work complies with, all requirements stipulated in Regulation 13;~~

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

- We support the wording of Draft Regulation 15(2)(a) over the alternatives.
- The Commission should be able to make its determination regarding the application and there is no need to contemplate a situation where it is “unable” to do so. It is also not necessary to add additional requirements beyond that contained in Draft Regulation 13 to Draft Regulation 15(2) as all of the other alternatives here propose to do.

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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 15(2)(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) part or all of the area covered by the proposed Plan of Work is included in:

~~(i) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant;~~ A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant *[Facilitators’ Note, This wording had been deleted previously, but two written submissions in September 2023 request its reinsertion].*

~~{(iv) an Area of Particular Environmental Interest or any other site disapproved for exploitation by the Council, [or that sets a spatial or temporal protective measure], as determined indicated in the applicable Regional Environmental Management Plan;}~~

~~{(v) any other area designated for preservation for reasons of special biological, scientific, archaeological, historic, cultural, aesthetic or wilderness significance;}~~

~~{(vii) An area that has not been subject to prior exploration activities;}~~

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

- We propose to reinstate the wording in Draft Regulation 15(2)(b)(i). Sub-paragraph 2(b)(i) is consistent with Article 6(3)(a) of Annex III of UNCLOS, which allows proposed Plans of Work to not be approved where “part or all of the area covered...is included in an approved plan of work...”. This provision is important to ensure that rights provided to Contractors are not in conflict and that the Contractor’s rights to exclusivity under Article 16 of Annex III of UNCLOS is upheld.
- We oppose the reference to a spatial or temporal protective measure in Draft Regulation 15(2)(b)(iv). It is unclear what the reference is referring to.

- We oppose the reference to designated areas in Draft Regulation 15(2)(b)(iv). It is unclear what designation is being referred to or what entity's designation would qualify under this sub-paragraph. We consider this to be overly broad, vague and unclear. As such, we propose it be deleted.
- We oppose the proposed Draft Regulation 15(2)(b)(vii) as it has no basis in UNCLOS or the 1994 Agreement. Areas may be exploited without having been previously explicitly explored, as long as sufficient data and environmental information is able to be provided to enable the Authority to assess the proposed Plan of Work. There is no need to arbitrarily require that an area have been explored on top of the other requirements set by these regulations.
- Alternatively, if sub-paragraph (vii) is to be maintained it should be clarified as follows: "An area that has not been subject to an exploration contract". This would clarify and simplify the Authority's assessment of this requirement – namely, by just requiring it to verify whether the area was previously covered by an exploration contract.

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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 15(2)(c) and 15 (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.

~~[(c) Such approval would undermine or contradict the regional goals, objectives or measures set out in the applicable Regional Environmental Management Plan.]~~

~~[(d) Such approval would pose a reasonable risk of damage to an in-service or planned submarine cable or pipeline, or cause undue interference with the freedom to lay submarine cables and pipelines when considered in conjunction with other approved Plans of Work [or is otherwise unable to give reasonable regard to other marine users in the area under application.]~~

~~[(e) There is inadequate or substandard environmental baseline information for the area covered by the proposed Plan of Work, or any part of that area.]~~

~~[2 bis. The Commission shall not recommend approval of a proposed Plan of Work if the applicant, its controlling shareholder or shareholders or its predecessor in law previously violated the general obligations of contractors in a non-negligible way.]~~

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

- We propose to delete Draft Regulation 15(2)(c) as its contents are not relevant considerations for the Commission and would inappropriately elevate the status of Regional Environmental Management Plans to legally binding instruments.
- We propose to delete Draft Regulation 15(2)(d) as its contents are already covered by Draft Regulation 13(4)(b), which is consistent with the obligation in Article 147 of UNCLOS that activities “shall be carried out with reasonable regard for other activities in the marine environment.” Any obligation regarding other activities in the Area, such as those related to submarine cables or pipelines, must accord with UNCLOS, be subject to

assistance from relevant member States (e.g. to identify such cables or proposed activities) and be on a best endeavors basis only.

- We propose to delete Draft Regulation 15(2)(e) as its contents is already covered by Draft Regulation 13(4)(c)(i). There is no need to duplicate the requirement around baseline data here.
- We propose to delete Draft Regulation 15(2bis) as it has no basis in UNCLOS or the 1994 Agreement, is not relevant to the Commission's considerations of proposed Plans of Work, is vague and far too broad in relation to what it captures.

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

Draft Regulations 15(3)(c)

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 not recommend the approval of a proposed Plan of Work if it determines that: [...]

(a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work in accordance with relevant Standards, taking into account relevant Guidelines; [...]

~~[(c) Such approval would permit a State party or entities sponsored by it to monopolize or significantly control the production of any single mineral or metal produced globally; or]~~

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

- We oppose the inclusion of Draft Regulation 15(3)(c) as it is unnecessary and creates a new and undefined concept of “significantly control” that is not used in the regulations.
- Sub-paragraph (c) is unnecessary as sub-paragraph (a) already prevents recommendations to approve proposed Plans of Work where they would permit monopolization of activities in the Area which is the key relevant concern for the Authority. As such there is no need to add additional requirements around “significant control” and monopolization of mineral/metal production globally.

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

Draft Regulation 15(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.

4. If the Commission determines that ~~it will not recommend approval of the Plan of Work [alt 1. for any reason][alt 2. pursuant to paragraphs (1)-(3)] the applicant does not meet the [criteria] [requirements] set out in [regulation s 12, 13 and 14][the regulations,~~ the Commission shall ~~so~~ inform the applicant in writing, ~~by~~ providing the reasons why ~~any [criterion has][any requirements set out in regulation 13 have not been met = by the applicant or why the Commission has been unable to make a determination,~~ and shall provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant. During this period the Commission shall not make a recommendation to the Council on the application.

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

- We consider that alt 1 is the most appropriate language for Draft Regulation 15(4). Draft Regulation 15(4)'s requirements should apply in all cases where the Commission recommends against approval of an application. There is no reason to limit it to only certain circumstances.
- We can also accept the other deletions proposed to this paragraph.

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

Draft Regulation 15(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.

5. ~~[At its next available meeting,] T~~he Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, ~~[alt 1. provided that the representations have been circulated at least 30 days in advance of that meeting] [alt 2. which it shall do within 30 days of its receipt of such representations]. The Commission shall then consider the application afresh, in the light of the representations, in accordance with this Section 3.~~

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

- We support the alt 2 wording for Draft Regulation 15(5) and object to including the reference to Commission’s “next available meeting”. 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.
- Linking the Commission’s consideration of these representations to its meeting schedule also risks it not complying with the overarching timeframe for its consideration and reporting on applications for Plans of Work.
- As such, we propose that the Commission should consider representations by applicants under Draft Regulation 15 within 30 days of receipt to ensure there is no unnecessary delay in these processes.
- We can also accept the other deletions proposed to this paragraph.

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

Draft Regulation 15(6)

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.

6. The Commission may refuse an application and return it to the applicant. The Commission must provide reasons for refusing an application, **including a summary of the deliberations of the Commission specifying what ~~inputs~~ considerations have been taken into account and how these have been assessed, as well as divergences of opinion within the Commission, if any.**

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

- We support the inclusion of the additional wording in Draft Regulation 15(6) as this will increase the transparency of Commission decision-making and assist States and Stakeholders with understanding its determinations regarding applications.