

**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 57(2)/(2)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.

~~2. A Contractor shall notify the Secretary-General if it wishes to modify the Plan of Work. The Secretary-General shall, in consultation with the Contractor, consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the Guidelines. If the Secretary-General considers that the proposed modification constitutes a Material Change, the Contractor shall seek the prior approval of the Council based on the recommendation of the Commission under regulations 12 and 16, and before such Material Change is implemented by the Contractor.~~

~~2 alt. If a Contractor wishes to modify a Plan of Work, it shall notify the Secretary-General. The Secretary-General shall ~~[inform the Council and]~~ transfer the ~~[alt 1 request]~~~~[alt 2 modified Plan of Work]~~ to the Commission, to consider whether a proposed modification to the Plan of Work constitutes a Material Change in accordance with the ~~[applicable] Standards~~ and in consultation with the Contractor. If the Commission considers that the proposed modification constitutes a Material Change, the Contractor ~~[may submit an appropriate recommendation to the Council]~~ shall seek the prior approval of the Council ~~b~~-Based on this a recommendation of the Commission, under regulations 12 and 16, ~~[the Council may give its prior approval]~~ ~~and~~ before such Material Change is implemented by the Contractor. The sponsoring State shall also be informed.~~

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

- We consider that the Secretary-General is the appropriate person to determine, with the Contractor, whether a change is material and thus requires approval by the Council. As such we prefer Draft Regulation 57(2) as compared to the 2 alt version.
- If Draft Regulation 57(2 alt) is to be adopted, we have proposed amendments to streamline it and retain the requirement of consultation with the Contractor. We also consider that if these changes are to go to the Commission, it should be empowered to work intersessionally on this rather than waiting for its regular meetings.

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

Draft Regulation 57(3), (3 alt 1) and (3 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.

3. Where the proposed modification under paragraph 2 ~~[alt 1. relates to a Material Change in]~~ ~~[alt 2. may have a potential impact on]~~ the Environmental Management and Monitoring Plan or Closure Plan, such plans shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.

~~[3 alt 1. Where the proposed modification under paragraph 2 is determined to constitute a Material Change, the Council, based on the recommendations of the Commission, shall determine whether the Contractor is required to undertake an environmental impact assessment and prepare an environmental impact statement of the proposed modification in accordance with Regulations [46bis] and [47], respectively. The Environmental Impact Statement, and any revisions to the Environmental Management and Monitoring Plan or Closure Plan, shall be dealt with in accordance with the procedure set out in regulation 11, prior to any consideration of the modification by the Commission.]~~

~~[3 alt 2. Where the proposed modification constitutes a Material Change, the public participation procedure as outlined in regulation 11 shall be held.]~~

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

- We support Draft Regulation 57(3) but believe the procedure contained in Draft Regulation 11 should only be invoked where the proposed modification under paragraph 2 relates to a Material Change in the Environmental Management and Monitoring Plan or Closure Plan.
- The phrase “may have a potential impact” is vague and gives no determinative guidance. It would be overly burdensome to invoke the Draft Regulation 11 procedures on that basis.

- We would not support Draft Regulation 57(3 alt 1) as requiring Contractors to undertake new environmental impact assessments and prepare new environmental impact statements for all proposed modifications is overly burdensome and inefficient.
- The environmental interests impacted by proposed modifications can be protected and dealt with adequately via the procedures captured in Draft Regulation 57(3).
- We propose deleting Draft Regulation 57(3 alt 2) as the public participation procedure outlined in Draft Regulation 11 should only be invoked for Material Changes to the Environmental Management and Monitoring Plan or Closure Plan rather than any Material Change.

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

Draft Regulation 57(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. ~~Notwithstanding Paragraph 2, ¶the Secretary-General may propose to and the Contractor may agree to a change to the Plan of Work that is not a Material Change in accordance with the relevant Standards, to correct minor omissions, errors or other such defects. After consulting the Contractor, the Secretary-General may make the change to the Plan of Work, and the Contractor shall implement such change.~~The Secretary-General shall so inform the Commission and the Council at ~~its~~their next meeting. ~~The Council may decide to apply the procedure as provided in paragraph (2).~~

~~4 alt 2.The Commission may recommend a change to the Plan of Work that is not a Material Change. The Secretary General will transmit the recommendation to the Contractor, and the Contractor shall implement such change. The Secretary General shall so inform the Council at its next meeting. In the instance of correcting minor omissions, errors or other such defects which are not substantive, the ISA Secretariat will be responsible for making the change and informing the Contractor and the Sponsoring State.~~

~~4 alt 3. The Commission or the Secretary General may propose a change to the Plan of Work that is not a Material Change, to correct minor omissions, errors or other such defects. The Secretary General will transmit the proposal to the Contractor. The Contractor will respond to the proposed change. The Commission will recommend the change to the Plan of Work, and the Contractor shall implement such change. The Secretary General shall so inform the Council at its next meeting.~~

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

- We support Draft Regulation 57(4)’s confirmation that the Contractor’s consent is essential to any modification to a Plan of Work. The Secretary-General cannot order such modification unilaterally, including under the guise that the proposed changes are merely made to fix minor errors or defects.

- We also support Draft Regulation 57(4)'s acknowledgment that the Contractor "may agree" to a proposed change but is not required to do so.
- However, we propose deleting the final sentence of Draft Regulation 57(4). The Council should not be allowed to override a prior agreement between the Contractor and the Secretary-General by declaring the matter a Material Change and invoking paragraph 2 procedures.
- We can also accept the other deletions proposed to this paragraph.
- We also propose deleting Draft Regulation 57(4) alt 2 and alt 3, which cover matters adequately addressed by Draft Regulation 57(4). The Commission also should not be able to force contractual changes upon Contractors.