

**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 58(1)/(1) 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. A Plan of Work shall be reviewed ~~at~~ intervals not exceeding five years from the date of signature of the exploitation contract. ~~{alt 1. The Commission or the Council can initiate additional reviews}{alt 2. or by decision of the Council based on the recommendations of the Commission}~~ in accordance with the applicable Standards and taking into account the applicable Guidelines ~~{or} where, according to the relevant organ of the Authority, as appropriate in the opinion of the Secretary General,~~ there have occurred any of the following events or changes of circumstance ~~taking into account:~~

~~1 alt. Activities under a Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the exploitation contract, or more frequently at the request of the Commission or the Council, including where any of the following events or changes of circumstance have occurred:~~

[...]

[Facilitators’ note: one submission asks for more clarity on the procedure for ‘pulling the trigger’ to initiate the review; and queries whether or not the Contractor is expected to suspend activities until the review concludes and a new Plan of Work is adopted? Another submission noted the need for a threshold of ‘significance’ for trigger events, and suggested this could be further detailed in Standards.]

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

- Our default position is that a review of a Plan of Work every five years is sufficient to ensure adequate oversight, protection and compliance. Out-of-cycle reviews should be strictly limited to clear and specific “triggering” events that are detailed in the Draft Regulations. Allowing reviews at the discretion of the Commission or the Council or for unspecified reasons undermines legal certainty and destabilizes the Contractor’s ability to effectively plan and execute operations in the Area.

- As such we support Draft Regulation 58(1), except that the only other potential trigger for review of a Plan of Work should be a decision of the Council based on the recommendations of the Commission. As the Authority's expert technical body, the Commission has the competence to decide whether an out-of-cycle review is warranted and can make recommendations to the Council accordingly.
- We also propose connecting the Commission's determination to the closed list of triggering events contained in the following sub-paragraphs. This will ensure both Contractors and the Commission have sufficient guidance and legal certainty regarding the circumstances triggering a review of a Plan of Work.
- We can also accept the other deletions proposed to this paragraph.
- We propose deleting Draft Regulation 58(1)alt, as it is not clear why "Activities" under a Plan of Work should be reviewed rather than the Plan of Work itself.
- With respect to Facilitator's comment, we agree with the submissions mentioned by the Facilitator and emphasise the need for clarity as well as a defined (and high) threshold of significance for trigger events. We support adding further detail in the Standards.

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Draft Regulation 58(1)(a)-(a sexies)

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~~[(a) A proposed Material Change in the implementation of the Plan of Work;]~~ *[Facilitators’ note: proponents for deletion of this sub-paragraph noted that a material change would be a potential outcome of a review, not a trigger for a review.]*

~~[(a bis.) Identification of a new significant environmental risk, or a significant change to existing risk calculations;]~~

~~(a bis alt.) Information has come to light that was not available when the Plan of Work was approved, including changes in Best Available Techniques or Best Available Scientific Information, and shows that more appropriate conditions are necessary to deal with the Environmental Effects of the activity;~~

~~(a ter.) An indication that the cumulative effects impacts as a result of Exploitation activities exceed any environmental thresholds established under the applicable Standards [and objectives established under the applicable Regional Environmental Management Plan;]~~

~~(a quat.) New significant information relevant to the effective protection of the Marine Environment;~~

~~(a quin.) Adverse impacts on the environment or other activities have arisen that were not anticipated, or are of a scale or intensity that was not anticipated, when the Plan of Work was approved.~~

~~(a sexies.) a request by another international body concerning other activities or measure in the Marine Environment pursuant to regulation 31.~~

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

- We consider that Draft Regulation 58(1)(a)-(a sexies) should all be deleted.
- In relation to Draft Regulation 58(1)(a), we agree with the Facilitator’s note.
- In relation to Draft Regulation 58(1)(a bis), it is too vague to be effective. The term “significant” is undefined in the Draft Regulations and in any event does not impose a high enough threshold to warrant review of a Plan of Work. Furthermore, it is unclear what an “environmental risk” means, or what would qualify as a “significant change to existing risk calculations.” These matters are also already covered by subparagraphs (f), (g) and (g bis).
- In relation to Draft Regulation 58(1)(a bis alt), we consider that subsequent changes to Best Available Techniques or Best Available Scientific Information should not, without more, trigger review of a Plan of Work. Furthermore, it is not clear how such information could “show that more appropriate conditions are necessary”, nor what is meant by “more appropriate conditions.”
- In relation to Draft Regulation 58(1)(a ter), it is unclear what an “indication” means or how the Commission could measure or monitor such an indication. If Draft Regulation 58(1)(a)ter is retained, we suggest defining the types of indications necessary to trigger a review and raising the associated threshold (e.g. a “credible indication”).
- In relation to Draft Regulation 58(1)(a quat), it is unclear and imprecise. It is not clear what qualifies as “significant” under the Draft Regulations, nor why new information “relevant to the effective protection of the Marine Environment” would require an out-of-cycle review of a Plan of Work.
- In relation to Draft Regulation 58(1)(a quin), it is unclear and imprecise. Among other things, “adverse impacts” are too low a threshold to trigger review of a Plan of Work – the threshold should be “serious harm”, at the very least. Furthermore, it is not clear what “other activities” means, nor how the Commission could determine whether adverse impacts were “not anticipated...when the Plan of Work was approved.”
- In relation to Draft Regulation 58(1)(a sexies) it usurps the Authority’s role regarding activities in the Area by allowing other international bodies to change or influence settled Plans of Work by making unspecified “request[s]” concerning unspecified “other activities or measure[s].”

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

Draft Regulation 58(1)(b)-(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.

~~(b) Any Incident;~~

~~(c) Recommendations for improvement in procedures or practices following an inspection report under regulation 100;~~

~~[(e) Changes in ownership or financing which may adversely affect the financial capability of the Contractor;]~~*[Facilitators’ note: proponents for deletion of this sub-paragraph consider this criteria should trigger a compliance response, not a regular review process that leads to an amended Plan of Work. This point may be relevant to the Intersessional Working Group on Inspections, Compliance and Enforcement.]*

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

- We propose deleting Draft Regulation 58(1)(b) as it is far too broad and unclear. As defined in the Draft Regulations, an Incident means “an event, or sequence of events” resulting in an array of adverse events ranging from marine casualties to damage to submarine cables or pipelines. It is simply not feasible to trigger review of a Plan of Work for every qualifying Incident.
- We also propose deleting Draft Regulation 58(1)(c) as we do not believe recommendations for improvement in procedures or practices following an inspection report under Draft Regulation 100 warrant out-of-cycle reviews of a Plan of Work. If the Draft Regulations need to specify when and how to implement such recommendations, we propose drafting a separate Regulation to that effect.
- In relation to Draft Regulation 58(1)(c), we agree with the Facilitator and propose that any compliance response required by changes in ownership or financing be determined by the IWG on Inspections, Compliance and Enforcement. As such we agree that Draft Regulation 58(1)(e) should be deleted.

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Draft Regulation 58(1)(f),(g),(g 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.

(f) **Significant Changes** in Best Available Techniques [relevant to the Contractor’s activities under its Plan of Work](#);

(g) **Significant Changes** in Best Available Scientific Information [relevant to the Contractor’s activities under its Plan of Work](#);

(g bis.) **Significant Changes** in Best Environmental Practices [relevant to the Contractor’s activities under its Plan of Work](#);

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

- We support the addition of the defined term “Significant Change” into Draft Regulation 58(1)(f), (g) and (g bis). The definition should set a high threshold to trigger an out-of-cycle review.
- We also propose adding language to clarify that a Significant Change must be relevant to the Contractor’s activities under a Plan of Work.

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Draft Regulation 58(1)(h)

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~~(h) Operational management changes, including changes to subcontractors and suppliers, whereby the Commission, after review with the Contractor of the Contractor’s activities under the Plan of Work, shall recommend to the Council whether any modifications to the Plan of Work are necessary.] the relevant organ of the Authority as appropriate shall [Secretary General may] review with the Contractor the Contractor’s activities under the Plan of Work, and such organ shall recommend to the Council [discuss] whether any modifications to the Plan of Work are necessary or desirable.~~

~~(h bis.) Changes in the overall policy of the Authority.~~

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

- We propose deleting Draft Regulation 58(h), as it lacks a sufficient materiality threshold and a clear description of how operational management changes would impact a Plan of Work in a manner necessary to trigger an out-of-cycle review.
- We also oppose Draft Regulation 58(1)(h bis) as it is unclear and overbroad. We consider that five-year reviews for Plans of Work will be sufficient to accommodate these kind of matters and out-of-cycle reviews should be triggered only in extraordinary circumstances

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Draft Regulation 58(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. ~~{alt 1. The Contractor shall commission a competent, independent expert or experts to undertake a review under paragraph (1)} {alt 2. A review of activities under paragraph (1) shall be undertaken by the Contractor and verified by an independent expert}~~ in accordance with the relevant regulations, Standards and **taking into account** the Guidelines. The [Secretary-General][or][and][the Contractor] shall invite the sponsoring State or States, and relevant coastal States, to participate in the review ~~of [activities][the Plan of Work]~~. **The results of the review shall be compiled as a report.**

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

- We reiterate our opposition to involving outside experts in these determinations. The Contractor is competent to undertake the review and report to the Commission. As such we propose amendments to Draft Regulation 58(2) accordingly.
- We also note that the results of any review under Draft Regulation 58(2) should be subject to the Draft Regulations’ protections for confidential information.

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Draft Regulation 58(3)/(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 Secretary-General shall forward the report on each review to the Commission and Council, and the sponsoring State or States. Where, as a result of a review, ~~[alt 1. the Contractor or the Council, based on the recommendation by the Commission, wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with regulation 57(2) and, where applicable, regulation 57(3)]~~ [alt 2. the Contractor considers that Material Changes need to be made to the Plan of Work, it shall submit such changes for approval by the Council based on the recommendations of the Commission ~~shall recommend the relevant changes to the Council, and the Contractor shall implement them~~].

[[3 alt.] The ~~organ~~ person or persons in charge of the review shall report on each review to the Commission and Council, the sponsoring State or States and the relevant coastal States. Where, as a result of a review, ~~material changes the Council, Commission, or Contractor or reviewer identifies that modifications~~ need to be made to the Plan of Work, ~~the Commission shall recommend said changes to the Council, and the Contractor shall implement such changes as soon as viable. Where, as a result of a review, the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes requiring the approval of the Council, based on the recommendation of the Commission, the Contractor shall seek that approval in accordance with~~ regulation 57(2) and, where applicable, regulation 57(3) shall apply.

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

- We support the alt 2 in Draft Regulation 58(3) with amendments to make clear that changes to a contract should be initiated by the Contractor before being approved by the Council.

- We also consider that Draft Regulation 58(3 alt) may be an appropriate text if amended so that modifications to the Plan of Work are to be initiated by the Contractor or Commission.

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Draft Regulation 58(4)

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4. ~~{alt 1. For the purpose of the review, the Contractor shall provide all}~~ ~~{alt 2. The Secretary-General may request the Contractor to submit such additional data and}~~ information **required by the** ~~{alt 1. independent expert or experts}~~ ~~{alt 2. Secretary-General}~~ in the manner and at the times ~~{alt 1. as the Secretary-General reasonably requested}~~ **as may be necessary for the purposes of this regulation**.

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

- We acknowledge the need for the Contractor to provide additional information as requested by the Secretary-General. However, the Secretary-General should be the only authority able to make such a request, which should be issued only as necessary for the purposes of Draft Regulation 58(4).