

**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 85(1)

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 Contractor shall pay **to the Authority, [alt 1. from the date of commencement of Commercial Production in a Contract Area]**~~[alt 2. from the effective date of an exploitation contract and for the term of the exploitation contract and any renewal thereof]~~ an annual fixed fee. The amount of the fee shall be established by the Council as required under paragraph (1)(d) of section 8 of the annex to the Agreement.~~on the advice of the Finance Committee, and with the aim to cover the likely costs associated with the Authority’s management of the contract, including staffing the Secretariat and conducting inspection and enforcement activities.~~

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

- We note that requiring payment of an annual fixed fee from the effective date of an exploitation contract and for the term of that contract and any renewal thereof is inconsistent with Section 8(1)(d) of the 1994 Agreement. As such we consider that alt 1 is to be preferred in Draft Regulation 85(1).

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Draft Regulation 85(3)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.

~~3 bis. Where an annual fixed fee remains unpaid after the date it becomes due and payable,~~

~~(a) this constitutes a violation of the fundamental terms of the contract for the purposes of regulation 103, and~~

~~(b) a Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.~~

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

- We oppose making a failure to pay annual fixed fees a violation of the fundamental terms of a contract per Draft Regulation 103. This exposes Contractors to significant legal liability immediately upon missing a single fee payment.
- We suggest that the details governing late fees and accumulated interest be addressed in a Standard or Guideline or under the compliance and enforcement regulations.

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Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd.

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Draft Regulation 85(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.~~ In any Calendar Year, the annual fixed fee may be credited against any royalty or other amount payable under Part VII of these regulations. ~~]~~ *[Facilitators’ Note: One submission noted that retention of this wording would mean using the financial benefits derived from exploitation to fund the ISA’s regulatory costs, i.e. prioritising savings for the contractor above maximising revenue for equitable benefit-sharing for humankind, and particularly developing countries.]*

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

- We consider that Draft Regulation 85(4) accurately expresses the purpose and use of the annual fixed fee under Section 8(1)(d) of the 1994 Agreement. As such it should not be deleted.