

**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:

President's Text

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 Reg. 18(1)(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.

Regulation 18

Rights and exclusivity under an exploitation contract

1. An exploitation contract shall confer on a Contractor ~~[or the Enterprise]~~ the exclusive right to: [...]

(b) Exploit the specified Resource category in the Contract Area in accordance with the approved Plan of Work ~~and regulations 18bis and 18ter~~, provided that ~~[exploitation activities] [mining operations]~~ shall only take place in approved Mining Areas and subject to prerequisites prescribed under regulation 25(6).

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

- We propose deleting the reference to Draft Regulations 18bis and 18 ter from Draft Regulation 18(1)(b) as the Contractor is required to exploit the specified resource category in accordance with all relevant regulations. There is no need to specify particular regulations here.

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Draft Reg. 18(3)

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3. The Authority, in consultation with a Contractor, ~~{and with the cooperation of States Parties to the Convention,}~~ shall ensure, ~~{to the extent possible,}~~ that no other entity ~~Contractor~~ operates in the Contract Area for a different category of ~~R~~resources in a manner which might interfere with the rights granted to ~~{or operations of}~~ the Contractor.

3 bis. The Authority, with the cooperation of States Parties to the Convention, shall ensure, to the extent possible, that no other entities operating in the Contract Area interfere with the rights granted to or operations of the Contractor.

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

- We reiterate our proposal for a paragraph specifying that the Authority shall ensure that no other entities operate in the Contract Area in a manner that interferes with the Contractor's rights or operations.
- While Draft Regulation 18(3) currently applies in relation operations regarding resources, a broader provision is needed given the variety of other uses that can be made of the Area.

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Draft Reg. 18(4), (5) and (5.bis)

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4. An exploitation contract shall provide for security of tenure and shall not be revised, suspended, or terminated except in accordance with ~~[Regulation 18.ter.]~~
~~[the terms thereof].~~ the terms thereof.

5. An exploitation contract shall not confer any interest or right on a Contractor in or over any other part of the Area or its Resources ~~for any other part of the Marine Environment,~~ other than those rights expressly granted by the terms of the exploitation contract or these regulations ~~[nor limit any freedoms of the high seas].~~

~~[5.bis. Adverse impacts from activities in the Area carried out under an Exploitation Contract must be limited to the Contract area.]~~

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

- We prefer the original wording of Draft Regulation 18(4). The primary legal relationship between the Authority and Contractors is created by the contract. As such, the contract should only be amended, suspended or terminated in accordance with its own terms.
- We propose deleting the language "nor limit any freedoms of the high seas" from Draft Regulation 18(5). This concept is already reflected in the Draft Regulations and does not need to be mentioned here.
- Paragraph (5.bis) is not appropriate for Draft Regulation 18 as it imposes an obligation on a Contractor's activities rather than specifying the rights and exclusivity

granted to a Contractor under a contract (which is the purpose of Draft Regulation 18). Furthermore, adverse impacts from activities in the Area are addressed elsewhere in the Draft Regulations.

- We note that “adverse impacts” is a broad term and it may not be feasible to have zero adverse impacts outside of a contract area. If this language is retained elsewhere in the Draft Regulations a more standard term should be used – such as Serious Harm – and appropriate language should be inserted to recognize cases where adverse impacts are unavoidable.

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Draft Reg. 18(7)

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7. In relation to exploration activities in the Contract Area conducted under an exploitation contract:

[...]

(b) ~~the applicable Exploration Regulations shall continue to apply and the applicable Exploration Regulations shall continue to apply as set out in the relevant [Standards and/or] [Guidelines]. In particular, t~~ the Contractor shall ~~continue to [show]~~ exercise due diligence in conducting exploration activities in the Contract Area and shall report, ~~together with the reporting of such activities and it's~~ the results of its Exploration activities to the Authority in accordance with ~~the applicable Exploration Regulations, including under regulation 38 (2) (k) and relevant Standards, taking account of Guidelines.~~

~~(c) The Contractor shall also take into account:~~

~~(i) any recommendations issued by the Commission pursuant to the Exploration Regulations, and~~

~~(ii) provisions of the Exploration Regulations that relate to the protection and preservation of the marine environment, and environmental baselines and monitoring.~~

~~(d) In order to progress from Exploration to Exploitation of a site within the Contract Area, where such Exploitation activity was not covered by the agreed Plan of Work, the Contractor must submit a new environmental impact statement and revised Plan of Work, in accordance with regulation [46.bis.] and which must be approved by the Authority in accordance with regulations [12 to 16].~~

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

- We reiterate our proposal to delete the reference to Standards and Guidelines from Draft Regulation 18(7)(b) as it is unnecessary and may create uncertainty. All exploration should be carried out in accordance with the existing Exploration Regulations and existing exploration regulatory framework to ensure a consistent and continuous approach is taken to all Contractors.
- We also consider that referring to the Exploration Regulations makes sub-paragraph 18(7)(c) duplicative and so it can also be deleted.
- We consider that sub-paragraph (d) is unnecessary given the other Draft Regulations regarding material changes which can be used to accommodate progressions from exploration to exploitation in the Contract Area. This is a more efficient approach, particularly where the proposed mining area has similar baseline conditions as areas subject to existing exploitation activities.