

**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:

Open-ended Working Group of the Council on the Financial Terms of a Contract

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 38(2)(a),(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.

2. Such annual reports shall **be in accordance with relevant Standards and Guidelines and include:**

(a) Details of the Exploitation work carried out during the Calendar Year, including maps, charts and graphs illustrating the work that has been done and the data and results obtained, reported against ~~and noting variance from~~ the approved Plan of Work;

[...]

(c) Details of the equipment used to carry out Exploitation, and in operation at the end of the period, ~~if different from the Plan of Work;~~

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

- We note that the language proposed to be inserted into Draft Regulation 38(2)(a) and (b) suggest that unapproved exploitation and equipment may be able to be used as part of Exploitation. As such we propose that this language be deleted.

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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 38(2)(d)

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2. Such annual reports shall **be in accordance with relevant Standards and Guidelines and include:**

[...]

(d) An annual financial report, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, of the actual and direct Exploitation expenditures, which are the capital expenditures and operating costs of the Contractor in carrying out the programme of activities during the Contractor’s accounting year in respect of the Contract Area, together with an annual statement of the computation of payments paid or payable **by the Contractor to the Authority and Sponsoring States, ~~governments, state enterprises, and other contractors, as well as payments and other forms of financial benefit received by the Contractor from Sponsoring States,~~ and** reported against the Financing Plan;

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

- We do not support the new text added at Draft Regulation 38(2)(d). Requiring annual statements of payments paid or payable to all governments, state enterprises and other contractors as well as “other forms of financial benefits received” from Sponsoring States is excessive, unnecessary and overly burdensome. For example, it is unclear the purpose of the Authority requiring reporting on payments made between Contractors.

The annual statement should include only payments made by the Contractor to the Authority and its Sponsoring State(s).

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Draft Regulation 38(2)(e)

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2. Such annual reports shall **be in accordance with relevant Standards and Guidelines and include: [...]**

~~(e) Health and safety information, including details of any accidents or incidents arising during the period and actions taken in respect of the Contractor’s health and safety procedures; Information on compliance with health, labour and safety standards~~ reported against the Health and Safety Plan;

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

- For consistency with the approach taken in Draft Regulation 38(2)(d) and (f), which refer to the relevant Plans that form part of the Plan of Work, we propose to include reference the Health and Safety Plan in Draft Regulation 38(2)(e).

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Draft Regulation 38(2)(g) and (g)ter

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2. Such annual reports shall **be in accordance with relevant Standards and Guidelines and** include: [...]

(g) The actual results **{and data}** obtained from environmental monitoring programmes, including observations, measurements, evaluations and the analysis of environmental parameters, reported against, where applicable, any criteria **{and thresholds included in the applicable Standards, and against the Environmental Management and Monitoring Plan, [and taking into account environmental [goals and] objectives pursuant to [these Regulations,] the Regional Environmental Management Plan where applicable]} [, technical Standards and indicators, including environmental objectives and standards, pursuant to the applicable Regional Environmental Management Plan and the Environmental Management and Monitoring Plan],** together with details of any response actions implemented under the plan and the actual costs of compliance with the plan;

[...]

~~(g)ter details of all revenues and operating costs associated with activities in handling and processing, including carbon emissions, to the degree available to support transparent identification of BEP.]~~

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

- We consider that annual environmental reporting under Draft Regulation 38(2) should be against the Contractor's Environmental Management and Monitoring Plan (EMMP), not the Regional Environmental Management Plan (REMP).
- The EMMP is the document that directly regulates environmental management and monitoring the Contractor's activities. The REMP is a document created by the Authority, which will be reflected in the EMMP.
- We also object to the inclusion of the proposed 38(2)(g)ter as it is not clear why the matters it specifies are relevant to the considerations of the Authority or indeed on what legal basis the Authority should have access to this information. Revenues and costs regarding handling and processing may also be commercially sensitive information.

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

Draft Regulation 38(2)(j bis)

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2. Such annual reports shall **be in accordance with relevant Standards and Guidelines and** include: [...]

~~[(j)bis Details about any changes made to the Contractor’s business structure or collaborations, including but not limited to their subcontractors, holding, subsidiaries, affiliates and ultimate parent companies, agencies and partnerships;]~~

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

- We object to the inclusion of Draft Regulation 38(2)(j bis) as it is unnecessary and excessive. The wording of this paragraph is extremely broad, particularly for Contractors that may be part of a broader group of companies that undertake a range of business activities beyond just deep seabed mining. It is also not clear how this information would assist the Authority.

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

Draft Regulation 38(2)(o)

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2. Such annual reports shall **be in accordance with relevant Standards and Guidelines and** include: [...]

(o) **Details of any engagement and consultations carried out with coastal States, other marine users, or any other Stakeholders, including pursuant to Regulations 31;**

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

- We propose to add “engagement” with Stakeholders to the scope of Draft Regulation 38(2)(o) to ensure that any less formalized involvement of Stakeholders is also included in the annual report. This sub-paragraph will also need to be reviewed once the informal working group on consultation finishes its work.

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Draft Regulation 38(2)(u)

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2. Such annual reports shall **be in accordance with relevant Standards and Guidelines and** include: [...]

(u) **The indicative planned date of Closure, and an explanation of any changes to the date, if applicable, in accordance with regulation 59]**

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

- We note that the planned date of the Closure is unlikely to be known at the early stages of activities. We therefore propose to refer to “indicative planned date of Closure” in Draft Regulation 38(2)(u) to also accommodate annual reports in the early stages of activities.

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Draft Regulation 38(2)

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Explanation / Comment

- Two participants have proposed new subparagraphs in paragraph 2. They include references to reports or documents that are required to be reported by contractors in different parts of the regulations, that are not included in this list of annual reporting requirements. I invite comments.

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

- We consider that rather than having multiple regulations requiring different kinds of annual reports and then needing to cross reference these regulations to each other, it would be preferable for annual reporting requirements to be combined into a single regulation.
- This would ensure clarity and consistency in relation to annual reporting requirements.

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Draft Regulation 38(2)bis

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~~[(2)bis. [The Secretariat shall arrange for the effective management of the submitted information in order to overcome existing gaps in knowledge concerning the marine ecosystems including their sensitivity and resilience, the determination of environmental quality standards and appropriate exploitation equipment.]]~~ [2 bis ALT The Commission shall review annual reports received, and shall prepare and submit to the Council a summary report which shall record any trends or findings from the review, and any related recommendations for the Council’s consideration. The report should include any information relevant to the formulation by the Authority of rules, regulations and procedures concerning protection of the marine environment and safety.]

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

- We prefer Draft Regulation 38(2)bis ALT out of these two options as it is clear in relation to what it requires. The original Draft Regulation 38(2)bis imposed a vague requirement upon the Secretary and was unclear regarding what it actually required the Secretary to do.