

**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:

Informal Working Group – Environment.

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. 47 bis alt (47 ter) (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. The applicant or Contractor shall, in accordance with the Standards, and taking into account the Guidelines, undertake an impact assessment, based on the Terms of Reference ~~agreed~~ in the Scoping report, to describe the impacts on the marine environment and Underwater Cultural Heritage and to predict the nature and extent of the Environmental Effects of the mining operation, including residual impacts, on the marine environment and Underwater Cultural Heritage, also considering cumulative impacts, including existing and foreseen mining operations, other activities and natural phenomena. This includes assessing:

(i) The intensity or severity of the impact at the specific site being affected;

(ii) The spatial extent of the impact relative to the availability of the habitat type affected;

(iii) The sensitivity/vulnerability of the ecosystem to the impact;

(iv) The ability of an ecosystem to recover from harm, and the rate of such recovery;

(v) The extent to which ecosystem functions may be altered by the impact; and

~~(vi) The timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life history stages affected for its long survival.~~

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

- As drafted, it is unclear whether Draft Regulation 47 bis alt (47 ter) is proposing an additional EIA Process as compared to Draft Regulation 47 (alt).
- From our review of the text and of the joint proposal, there appears to be a substantial overlap between both of the proposed regulations. We propose the

regulations be clarified to show how they are intended to operate and to reduce duplication and ambiguity.

- Furthermore, we propose to delete the word “agreed” from Draft Regulation 47 bis alt (1). It is unclear why the Terms of Reference in the Scoping Report need to be “agreed” and it may be that the Authority does not convey any agreement or disagreement with the proposed Terms of Reference.
- We also reiterate that all references to “Underwater Cultural Heritage” need to be aligned with the term as defined in the Draft Regulations, consistent with our other written submissions.
- Finally, we continue to oppose the inclusion of Draft Regulation 47 bis alt (1) (vi) and suggest it be removed, consistent with our previous written submissions. The requirement in this sub-paragraph is unclear, unrealistic and excessively burdensome.
- This provision could be read as requiring a comprehensive mapping and understanding of each separate species and their entire life history and then the impact of each element of the mining process upon the life history stages. This would clearly not be physically possible during the EIA Process and is better suited as a long-term monitoring and assessment objective.
- Such a requirement would also not be aligned with any major terrestrial mining regulatory regime and impose more onerous requirements on sea-based miners than that imposed on land-based miners.

**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:

Informal Working Group – Environment.

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. 47 bis alt (47 ter) (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. Undertaking the impact assessment, the applicant or Contractor shall complete:

(a) An analysis of reasonable alternatives remaining post Scoping to the planned activity under the jurisdiction or control of a State Party, including the no-action alternative,

(b) Identification of measures envisaged to mitigate and manage, ~~prevent~~ avoid, minimize, control, Environmental Effects and risks to as low as reasonably practicable, while within acceptable levels in accordance with environmental Standards, including through the development and preparation of an Environmental Management and Monitoring Plan

[...]

(e) A proactive ~~consultation~~ engagement by an applicant or Contractor with Stakeholders at all stages, in accordance with relevant Standards and taking account of Guideline, which includes:

(i) Providing Stakeholders with access to up-to-date and comprehensive information about the proposed activities and environmental data and impacts,

(ii) Using best efforts to obtain Stakeholder comments on the draft scoping report and draft environmental impact statement for a reasonable period.

(iii) Provide a reasonable opportunity for Stakeholders to raise enquiries and to make known their views,

(iv) Make publicly available Stakeholder comments received during the engagement consultation process, including on the applicant or Contractor's own website, and

(v) Record and address, in the scoping report and Environmental Impact Statement respectively, any substantive and relevant Stakeholder comments received.

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

- Consistent with our previous written submissions, we propose that the detail contained in Draft Regulation 47 bis alt (2) be moved to the applicable Standard and Guideline.
- We also consider that the word "prevent" is not appropriate for inclusion in Draft Regulation 47 bis alt (2) (b). Risk cannot be prevented – it can only be avoided, minimised or reduced. As such, we propose replacing "prevent" with "avoid."
- We further propose that the text of Draft Regulation 47 bis alt (2) (e) be streamlined and condensed once the cross-cutting consultation provisions are concluded by the intersessional working group.
- Finally, we propose replacing the term "consultation" with "engagement" in Draft Regulation 47 bis alt (2)(e). Consultation is a formalised process with clear timeframes and processes. It is designed for use in relation to specific documents and milestones. Sub-paragraph (e) is broadly drafted as applying "at all stages". As such we suggest "engagement" is the more appropriate word to use as it refers to on-going discussions and involvement of stakeholders in the process.