

**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. 52(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. ...[In conducting such a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall ~~ensure~~ assess: [...]

(g) Information and data derived from monitoring at the mine site and impact area ~~as well as from any Exploitation by other Contractors is provided.~~

~~(g)bis The implementation report of the Environmental Management and Monitoring Plan, as well as the comments and evaluation from the Commission in accordance with Regulation 48 above.~~

~~(g)ter Any finding of the Inspectors, especially those findings that indicate the non-compliance of the Contractors towards the submitted and approved Environmental Monitoring and Management Plan, as well as the recommendations on measures to be taken as shown in the inspection result.]~~

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

- If, contrary to our submission, the sub-paragraphs in Draft Regulation 52(1) remain part of the Draft Regulations, we have proposed amendments to sub-paragraph (g).
- We note that that the information from “any Exploitation by other Contractors” might not be readily available to the Contractor and it is unclear how a Contractor would assess this in the context of their own EMMP.
- We are also concerned that sub-paragraphs (g)bis and (g)ter would require the “The Contractor” to “assess” the implementation report and Inspectors’ findings. It is unclear if this is the intention in this paragraph and suggest this proposal requires

additional clarification. Given these concerns we propose the removal of these paragraphs from Draft Regulation 52(1).

**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. 52 (3), (4) and (6)

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 Contractor shall ~~hire a competent and independent auditor to compile and submit a~~ Pperformance Aassessment Rreport to the Secretary-General in accordance with, and in the format set out in, the applicable Standard or applicable ~~relevant~~ Guidelines.

4. ~~The Secretary-General shall publish the Performance Assessment Report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholder’s comments to the Commission [and Compliance Committee / Inspector-General]. The Commission shall in consultation with the [Compliance Committee / Inspector-General] review the performance~~ Performance assessment ~~Assessment report~~ Report and any stakeholder comments received to it at its next available meeting, provided that the report has been circulated at least 30 Days in advance of such meeting. ~~If the Commission does not possess sufficient expertise amongst its members, it shall consult independent experts to review the performance assessment.~~ The Commission should, where necessary and appropriate, consult external experts in its ~~to review~~ of the performance assessment. ~~The Secretary General shall publish the report and provide opportunity for Stakeholders to comment, and at the end of that consultation period shall transmit the report and any Stakeholders’ comments to the Commission for review.~~

[...]

~~6. Where the Commission has reasonable grounds to believe that a performance assessment cannot be undertaken satisfactorily by a Contractor consistent with the applicable Standards Guidelines, the Commission may procure, at the cost of the Contractor, an independent competent person to conduct the performance assessment and to compile the report.~~

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

- We consider that Draft Regulation 52(3) should not mandate that Contractors hire external auditors for the preparation of a Performance Assessment Report. Contractors are likely to have sufficient expertise within their own staff to conduct this work and there is no reason to require them to engage additional staff where this is the case.
- We also propose an amendment to Draft Regulation 52(4) to clarify the Commission's ability to use experts to review performance assessments. Independent experts should not usurp the role of the Authority in considering performance assessments, but may be able to provide specific advice and assistance.
- We do not consider that Draft Regulation 52(6) is necessary or appropriate. The applicable Standard and Guideline will ensure that the performance assessment meets the requirements of the Authority, and the Commission is able to engage its own experts to assist its consideration of the performance assessment.
- There is no basis for further empowering the Commission to require the Contractor to further pay for an additional independent expert to duplicate its work in preparing a performance assessment.
- If the original text is retained it is possible that two separate expert bodies will have either prepared or reviewed the Performance Assessment Report, all at the expense of the contractor. This is both unfair and an arbitrary expenditure cost.

**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. 52(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.

Regulation 52

Review of the Performance assessments of the Environmental Management and Monitoring Plan

1. A Contractor shall conduct performance assessments of ~~their~~its Environmental Management and Monitoring Plan. The Commission shall review the performance assessments of the Environmental Management and Monitoring Plan undertaken by a competent and independent auditor hired by a Contractor in accordance with the ~~relevant~~applicable Standards and taking account of the applicable~~relevant~~ Guidelines. ~~[In conducting such a performance assessment of the Environmental Management and Monitoring Plan, the Contractor shall ensure assess:- [...]~~

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

- We support the Facilitator’s proposal to move the specifics of performance assessments of EMMPs to Standards and Guidelines.
- We consider this would help streamline the Draft Regulations and ensure they remain fit for purpose into the future. We therefore propose removing this part of Draft Regulation 52(1).

**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. 52(2bis)(d)

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.

2bis. An ad hoc performance assessment may be requested by the [Council] [Compliance body] following: [...]

~~(d) When deemed necessary by the Council in response to third-party or whistleblower information submitted to the Council.~~

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

- We suggest deleting Draft Regulation 52(2bis)(d) as the Council should not be instigating assessments based on third party information that has not been verified.

**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. 52

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.

Explanation / Comment

- During our last meeting, one participant reflected on possibly amend paragraph 1 to separately state/list the different elements of this provision. Another participant suggested to alter the structure of paragraph 1 to better align with the mining process. I propose that the listed elements in paragraph 1 later could be moved to the “Draft guidelines for the preparation of Environmental Management and Monitoring Plans” ([The Mining Code: Standards and Guidelines – International Seabed Authority \(isa.org.jm\)](#)) which I have also suggested in the accompanying Matrix. I invite for comments to these views and also encourage that concrete proposals for re-wording/re-structuring paragraph 1 are submitted to reflect these positions.

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

- We support the proposal of the Facilitator to move elements of Draft Regulation 51(1) to the Guidelines to help streamline the Draft Regulations.