

**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. 55

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 55

Purpose of the Environmental Compensation Fund

1. The purpose of the Fund is to finance the implementation of any necessary measures designed to mitigate or compensate for any [unlawful] loss or damage to the Marine Environment of the Area or coastal states outside of approved activities in the Area, ~~or damage caused to third parties arising from exploration~~ Exploitation ~~activities in the Area when~~ where the costs of such measures ~~and efforts~~ cannot be recovered from a Contractor or Sponsoring State. This includes the remediation, restoration and or rehabilitation of the Area Marine Environment (~~when~~ where the such remediation, restoration or rehabilitation is technically and economically feasible) ~~and~~ in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques ~~when the costs of such measures and efforts cannot be recovered from a Contractor or Sponsoring State, as the case may be for environmental damage outside of consented activity.~~ Compensation can be used in cases ~~when the restoration and rehabilitation are impossible.~~ ~~shall include the costs for implementation of any necessary measures designed to prevent, reduce, mitigate, limit, and remediate any damage to the marine environment and its resources.~~

~~1. Alt. The purpose of the Fund is to finance compensation [and mitigation costs], which cannot be borne by the Contractor or Sponsoring State as the case may be, for environmental damage outside of consented activity.~~

2. Based on the ~~precautionary polluter pays~~ principle the Contractor^s pay for any necessary measure to limit, remedy and compensate any [unlawful] damage to the Area arising from their ~~mining~~ Exploitation activities.

~~[2.Alt. Based on the precautionary principle the contractor shall pay for necessary measures to limit, remedy and compensate damage to the Area arising from exploitation, outside of consented activity.]~~

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

- We propose that Draft Regulation 55 Alt serves as a base text for this provision with some limited proposed edits, which we have included in our separate submission.
- Consistent with our earlier submission, if Draft Regulation 55 is maintained, we propose the deletion of the words “damage caused to third parties” from paragraph 1 to clarify the language and remove unnecessary wording.
- We propose to insert the reference to the damage being “outside of approved activities”, as useful clarification regarding the kind of damage covered by this provision.
- We propose to delete the reference to compensation being used when restoration and rehabilitation is impossible. In some areas, some level of habitat degradation will be an unavoidable impact of activities in the Area. It will not be possible or feasible to restore or rehabilitate all areas. As such, including this reference would result in the rapid depletion of the ECF given the extent it would be drawn upon. It is also not clear who the compensation would be provided to in this context.
- We propose the deletion of paragraph 1Alt as paragraph 1 already clearly sets out the purpose of the Fund and how it is intended to be used and provides important detail that is missing from paragraph 1 Alt.
- Consistent with our earlier submission, we propose the deletion of paragraph 2Alt as the proposed reference to the precautionary principle is inconsistent with the Draft Regulations’ limited and specific use of the term “precautionary approach”.
- We consider that the reference to the “precautionary principle” is unwarranted in this context and, as the concept is understood under international law, has no bearing on the issues covered in Draft Regulation 55.