

**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 Alt.

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 Alt.

Purpose of the Environmental Compensation Fund

1. The Environmental Compensation Fund has two purposes:

(a) In the event that there is unlawful environmental damage caused by contractor activities that were not consented, then in accordance with the polluter pays principle the contractor shall bear liability for the financing of any measure to mitigate that unlawful environmental damage and shall also be liable for compensation to any person affected by that unlawful environmental damage, but if the contractor is unable to meet that liability in full, then, as a last resort, the environmental compensation fund may be called upon; ~~and~~

Explanation / Comment

- Several participants have submitted alternative proposals for rewording/restructuring the draft regulation, both ahead of the meeting in July and this meeting. I have inserted one of these alternative proposals as “Regulation 55 Alt.” as it represents a more streamlined and precise version which I support. To the participants who forwarded very detailed proposals, including to the previous alternative to Regulation 55 which has now been omitted in order to focus discussions, this specific information could perhaps best be placed in a standard or guideline which I have proposed drafted in my comment to the previous regulation (54.) I invite for comments to this.

- Proposals have been put forward to paragraphs 1 and 2 to specify that compensation relates to any “unlawful” damage or loss. I propose not to include this as it could limit the scope of the provision, but I have placed it in square brackets and invite for views on this matter.
- One participant has submitted an alternative wording to paragraph 2. This is inserted as “paragraph 2.Alt.” I note that the original paragraph 2 refers to the “polluter pays principle” while the alternative paragraph (now) refers to the “precautionary principle” In this context I believe that the original wording (referring to the “polluter pays principle”) is correct and this version should be used going forward. I have placed 2 alt. it in square brackets and invite for a discussion.

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

- We prefer Draft Regulation 55Alt to Draft Regulation 55 as the base text for this regulation.
- We consider that for consistency, Draft Regulation 55Alt(1)(a) should refer to “unlawful” environmental damage. Under the polluter pays principle, the Contractor should be required to provide compensation for unlawful damage to the Area arising from activities in the Area, not any damage no matter how minor or how caused.
- Therefore, the ECF should be limited to the remediation of unlawful damage, in circumstances where the Contractor is unwilling to remediate it and the Sponsoring State has met its due diligence obligations.
- We support the Facilitator’s suggestion that the specific information is better placed to be in a standard or guideline.
- We disagree with the Facilitator’s view that compensation should not be limited to “unlawful” damage or loss. We consider that the scope of Draft Regulation 55alt should be limited to unlawful damage and not any damage no matter how minor or how caused.
- We agree with the Facilitator that the correct term here is the “polluter pays principle.” Reference to the “precautionary principle” is unwarranted in this context and has no bearing on the issues covered by these regulations.