

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> 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](mailto: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. 59(1) and (1.bis)

**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. A Contractor shall develop a Closure Plan, in accordance with Regulation 7 (3) (i), Annex VIII to these regulations, the Environmental Management System and other Environmental Plans of the Contractor, as well as applicable Standards, also taking into consideration the Guidelines and the relevant Regional Environmental Management Plan.

[1.bis. The objectives of a Closure Plan are to ensure that:

(a) The marine environment is effectively protected and the site meets the agreed closure objectives ~~and will have a clear and healthy status following the end of mining activities,~~

~~(b) The adverse effects arising from closure activities are avoided, remedied, or mitigated,~~

(c) Any remaining residual environmental effects continue to be monitored and reported for a the period prescribed in the closure plan,

(d) The Mining Area is returned, where technically and economically feasible, to a condition resembling its pre-mining condition through active restoration. Where active restoration is not feasible, the Mining Area is rehabilitated, to the extent it is technically and economically feasible to facilitate passive restoration ~~The mined site is returned to its natural state, or returned to its natural state to the extent possible, through rehabilitation and restoration,~~

(e) The closure of mining activities is a process that is incorporated into the mining life cycle,

(f) Contractors take appropriate steps to minimise harm to the environment and to human health during any period of temporary suspension.]

**Explanation / comment**

- In general, and as also referred to in paragraph 5 alt, several participants have stated a need for consolidation or rewording or formal drafting of the regulation, perhaps moving parts to a relevant standard or guideline. I fully agree and propose that the detailed provisions in paragraph 1 bis, paragraph 2 litra a-g and paragraph 5 litras a-c are moved to a standard and/or guideline, either to be developed or in the existing “Draft guidelines for the preparation of Environmental Management and Monitoring Plans” which has references to the Closure Plan (see The Mining Code: Standards and Guidelines – International Seabed Authority (isa.org.jm) or Annex VIII. I have also suggested this in the accompanying Matrix. I have placed these mentioned sections (eligible for transfer to standard and guideline) in square brackets and invite for a discussion on this and/or concrete suggestions on streamlining this provision to be able to proceed on finalizing these Draft Regulations.

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

- We propose amendments to Draft Regulation 59(1) to reflect that the Closure Plan must be prepared in accordance with “applicable” Standards and taking into account the “relevant” REMP, consistent with how these documents are referred to across the Draft Regulations.
- We propose deleting Draft Regulation 59(1.bis) and moving the Closure Plan objectives to the Standards and Guidelines. The Draft Regulations should only outline the obligation to prepare and revise a Closure Plan. This is also consistent with the Facilitator’s proposal to move this content to a Standard or Guideline.
  - For example, a “clear and healthy status” for the marine environment is ambiguous and is therefore inappropriate for inclusion in the Draft Regulations. By including these objectives in a Standard and Guideline we can ensure there is appropriate clarity and certainty regarding what is required.
- If Draft Regulation 59(1.bis) is retained, we propose deleting the reference to “clear and healthy status” in sub-paragraph (a) and replacing it with a reference to meeting the closure objectives.
- We also do not consider sub-paragraph (b) is needed as it is not clear what adverse effects could arise from closure activities.
- We also propose minor amendments to sub-paragraph (c) to clarify the nature of the environmental effects to be monitored and that the relevant time period is “the” one set out in the Closure Plan.
- We also propose deleting the requirement that a mined site be “returned to its natural state, or returned to its natural state to the extent possible, through rehabilitation and restoration” in sub-paragraph (d). This is an impossible objective to achieve, particularly in the context of polymetallic nodules, which are generated

over significant periods of time. We have proposed alternative wording for this paragraph accordingly.

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Draft Reg. 59(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. The Closure Plan shall, in accordance with the requirements of Annex VIII, set out the responsibilities and actions of a Contractor during any temporary suspension, and also for the decommissioning and closure of activities in a Mining Area, including the post-closure management and monitoring of remaining Environmental Effects. [In fulfilling these responsibilities, the Contractor shall, inter alia:

(a) Undertake ~~activities and~~ the scheduling of studies, based on available baseline data, to inform ~~about~~ Closure,

[...]

(b) Set a date of cessation or suspension of mining activities, at which point a management and monitoring plan must also be in place for the period prescribed in the Closure Plan and in accordance with the applicable Standards and taking into account the relevant ~~guidelines~~ Guidelines and results obtained in previous monitoring activities,

(b bis) Undertake ~~early~~ timely discussions ~~between with~~ the Authority Commission through the Secretary-General and ~~contractors so that regulators~~ the Authority is duly informed of ~~understand~~ the likely timing of

- (i) ~~mining cessation~~ the cessation of activities,
- (ii) decommissioning, and
- (iii) post-closure monitoring.

~~(c) Identify, quantify, assess and detail the management measures for the~~ Identify, quantify, assess and detail the management measures for the Final-final environmental condition of the relevant mining area, including the state of remaining reserves, the oceanographic, geological, biological, socioeconomic and sociocultural condition, and the risks relating to ~~remaining~~ residual Environmental Effects are identified, quantified, assessed and managed in accordance with Best Available Scientific Information, Best Available ~~Technologies-Techniques~~ Best Available Technologies and Best Environmental Practices, which includes the gathering of information relevant to closure or suspension,

(c alt) demonstrate that the agreed closure objectives have been met.

~~(d) Comply with the necessary~~ health and safety requirements related to closure activities,

~~(e) Report on the identification, monitoring, and quantification of remaining Environmental Effects to the Authority, including data to inform about recovery or lack thereof, over a~~ the period established in the closure plan, and that necessary and appropriate management responses are implemented in a timely manner, including plans for further surveys, data collection, Mitigation, or remediation where appropriate. ~~[The collected monitoring data shall inform the Authority about the recovery, or lack thereof, over a the time period required by set out in the Closure Plan, in accordance with the applicable Standard and taking into account relevant applicable guidelines,]~~

~~(f) Make and fulfil required disposal, restoration and rehabilitation commitments in accordance with the relevant~~ applicable Standards and taking into account the ~~relevant~~ Guidelines,

~~(f bis) Remove completely any Installations and equipment, or parts therefrom, from the Mining Area, as well as any kind of abandoned waste. The Closure Plan should include an assessment of options leading to the identification of the contractor's preferred decommissioning solution for Installations and equipment, as well as parts therefrom, and~~

~~(g) The mining activities are closed or suspended efficiently and safely.]~~

#### **Explanation / comment**

- In general, and as also referred to in paragraph 5 alt, several participants have stated a need for consolidation or rewording or formal drafting of the regulation, perhaps moving parts to a relevant standard or guideline. I fully agree and propose that the detailed provisions in paragraph 1 bis, paragraph 2 litra a-g and paragraph 5 litras a-c are moved to a standard and/or guideline, either to be developed or in the existing "Draft guidelines for the preparation of Environmental Management and Monitoring Plans" which has references to the Closure Plan (see The Mining Code: Standards and Guidelines – International Seabed Authority (isa.org.jm) or Annex VIII. I have also suggested this in the accompanying Matrix. I have placed these mentioned sections (eligible for

transfer to standard and guideline) in square brackets and invite for a discussion on this and/or concrete suggestions on streamlining this provision to be able to proceed on finalizing these Draft Regulations.

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

- We agree with the Facilitator’s proposal to move the sub-paragraphs in Draft Regulation 59(2) to a Standard or Guideline.
- We also propose deleting the reference to “activities” from Draft Regulation 59(2)(a) as it is vague and unclear. Paragraph 2 establishes an obligation on the Contractor to do certain things – as such the matters specified should be clear.
- In relation to Draft Regulation 59(2)(b bis) we have clarified which entity in the Authority the Contractor is required to undertake discussions with and how these are to be facilitated. We have also proposed other drafting changes to this paragraph for clarity and consistency.
- In relation to Draft Regulation 59(2)(c), we consider the current drafting of this sub-paragraph is very unclear and may not work grammatically in this list. As such we propose to replace it with sub-paragraph (c alt) which succinctly refers to the Contractor demonstrating that it is has met the agreed closure objectives.
- If our sub-paragraph (c alt) is not accepted, we propose reinstating the deleted words “Identify, quantify, assess and detail the management measure for the” in Draft Regulation 59(2)(c). Absent these words, sub-paragraph (c) does not work grammatically as it does not create an obligation upon the Contractor to do anything. We also propose to clarify the scope of the word “area” given the scope of the Contractor’s activities and Closure Plan.
- We note that Draft Regulation 59(2)(e) is repetitive of sub-paragraph (c) and so should be deleted with any necessary elements merged into sub-paragraph (c). If sub-paragraph (e) is maintained, we have proposed amendments to clarify the language used and for consistency.
- In relation to Draft Regulation 59(2)(f bis), we consider the term “abandoned waste” is unclear and should be clarified or deleted. We also note that there is no need to refer to “equipment” as equipment is mobile and will merely be removed from the Area along with the vessel or installation it is used on.
- Our other proposed amendments are for consistency with the rest of the Draft Regulations.

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

Draft Reg. 59(2bis)

**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. The Contractor shall ~~take steps to promote~~ ensure transparency during the Closure process and ~~consult~~ engage Stakeholders in the Closure Plan design, review, and implementation.

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

- We consider that the word “engage” is more appropriate for use in Draft Regulation 59(2bis) as compared to “consult”.
- Consultations are considered to be more formalised processes involving set deadlines and commenting periods. Where consultation is required, it should be linked to specific documents or deadlines.
- Conversely, engagement is an on-going process that involves stakeholders in the decision-making and implementation of a decision.
- Engagement is more appropriate for this context which is a broad obligation to ensure stakeholders are involved in the Closure Plan design, review and implementation.

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

Draft Reg. 59(3)

**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 Closure Plan shall cover the aspects prescribed by the Authority in annex VIII to these regulations and in accordance with the relevant Standards and taking into account the relevant guidelines.~~

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

- We consider that Draft Regulation 59(3) is already entirely covered by Draft Regulation 59(1), which requires Contractors to develop a Closure Plan in accordance with (among other things) Annex VIII and the applicable Standard, and taking into account the applicable Guidelines. As such this paragraph should be deleted.



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

Draft Reg. 59(4)

**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.**

4. A contractor shall maintain and update its Closure Plan in accordance with these regulations, ~~and~~ Good Industry Practice, Best Environmental Practices, Best Available Techniques, Best Available Scientific Information and the applicable Standards and taking account of the relevant Guidelines.

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

- We propose a minor typographical amendment to Draft Regulation 59(4) and changes for consistency and clarity.

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

Draft Reg. 59(5)

**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.**

~~[5. The Closure Plan shall be reviewed and updated taking into account the results obtained from monitoring closure activities;~~

~~(a) Each time there is a Material Change in a Plan of Work, including new knowledge, technologies, devices and new scientific findings, change of contractor or sponsoring State,~~

~~(b) Every five years, when no Material Change has required an earlier update, and~~

~~(c) In the five years preceding the planned end of the period of Exploitation, the Closure Plan shall be updated [annually] [every 2 years] [every 3 years] [in the third and fifth year] [in the year before closure] and finalized in accordance with Regulation 60 (1).]~~

~~5. Alt. In the five years preceding the planned end of the period of Exploitation, or any other period as deemed necessary by the Contractor and the Sponsoring State, the Closure Plan shall be reviewed annually and, if necessary, be updated and be finalized in accordance with regulation 60(1). The review and update of the Closure Plan shall take into account the results obtained from monitoring post-closure activities and each time there is a Material Change in a Plan of Work. In cases where no such Material Change has occurred and no monitoring data and information or improved knowledge or technology has signalled need for updates, every five years and at the end of the project and be finalized in accordance with regulation 60 (1). Details on the procedures of review of the Closure Plan, including conditions~~

requiring updates thereof, shall be further elaborated in the [applicable Standards and taking account of the relevant Guidelines](#).

#### **Explanation / comment**

- In general, and as also referred to in paragraph 5 alt, several participants have stated a need for consolidation or rewording or formal drafting of the regulation, perhaps moving parts to a relevant standard or guideline. I fully agree and propose that the detailed provisions in paragraph 1 bis, paragraph 2 litra a-g and paragraph 5 litras a-c are moved to a standard and/or guideline, either to be developed or in the existing “Draft guidelines for the preparation of Environmental Management and Monitoring Plans” which has references to the Closure Plan (see The Mining Code: Standards and Guidelines – International Seabed Authority (isa.org.jm) or Annex VIII. I have also suggested this in the accompanying Matrix. I have placed these mentioned sections (eligible for transfer to standard and guideline) in square brackets and invite for a discussion on this and/or concrete suggestions on streamlining this provision to be able to proceed on finalizing these Draft Regulations.

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

- We consider that Draft Regulation 59(5 Alt) is preferable to the original text of Draft Regulation 59(5) as it provides clear timelines around review and updating the Closure Plan.
- However, we propose deleting the reference to the results obtained from monitoring post-closure activities given that there will not be any post-closure monitoring taking place five years prior to the end of exploitation. We also propose to remove the second to last sentence altogether as it does not appear to work grammatically.
- We do not consider it necessary to include any reference to the Sponsoring State determining the cessation of exploitation activities.
- We also propose amendments to make the references to the Standards and Guidelines consistent with the approach taken throughout the Draft Regulations.
- We would also support moving the details regarding reviews of Closure Plans to Standards or Guidelines.