

**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:

Open-ended Working Group of the Council on the Financial Terms of a Contract

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 Regulation 63 (Chair's Proposed Text)

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.

Chair's Proposed text

~~1. Pursuant to Article 11 of Annex III to the Convention, the Council may provide financial incentives to Contractors to undertake joint arrangements with the Enterprise, as provided for in Article 13 of Annex III to the Convention.~~

~~2. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.~~

~~3. Any incentives shall be fully compatible with the policies and principles under Regulation 2.~~

Explanation/Comment

- Three participants proposed that the Standards and Guidelines should include a clear definition and explanation of "financial incentives". Another participant opposes this and considers it should be left to experts. I invite the view of the participants as to what that definition would include.

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

- We support the Chair's Proposed text, however, note that the Chair's proposed text limits the use of financial incentives to Contractors undertaking joint arrangements with the Enterprise, which is not in line with the Convention's approach to incentives.

- We note that while Article 11 of Annex III does refer to incentives for joint arrangements with the Enterprise, Article 13(14) also envisages that the Authority can provide incentives “to further the objectives” set out in Article 13(1).
- We also consider the proposed paragraph 3 to be unnecessary and that it should be deleted. Draft Regulation 2 sets out a number of principles, approaches and policies that apply to the application of the regulations and decisions made under the regulations. There is no need to reiterate these solely under Draft Regulation 63.
- We also support the proposal for the Standards and Guidelines for contain a clear definition and explanation of “financial incentives”. We consider this would be a useful way to clarify the scope and application of these incentives.

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Draft Regulation 63(1)

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1. The Council may, taking into account the recommendations of the Commission ~~{and the Economic Planning Commission}~~, ~~{in accordance with the Standards and taking into account the Guidelines}~~, provide for incentives to Contractors, ~~including financial incentives, {as well as regulatory and technical advice}~~ on a transparent, uniform and non-discriminatory basis, ~~{to further}~~ ~~{limited to}~~ the objectives set out in article 13 (1) of annex III to the Convention. ~~{Incentives introduced by the Authority shall}~~ may, where appropriate, incentivize also Contractors to go beyond their existing contractual obligations and good industry practice, in particular in the context of environmental performances, ~~and fully reflect any impacts on ecosystem services and the natural capital.~~

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

- We prefer the “Chair’s Proposed text” alternative paragraphs 1 through 3 for Draft Regulation 63. If, however this version of paragraph 1 is adopted, we propose deleting the reference to “regulatory and technical advice” from paragraph 1 as it is not clear how the provision of advice could be an “incentive”.
- We also oppose inserting “limited to” into Draft Regulation 63(1). It is not clear how incentives can be limited to the “objectives” referred to.
- We also consider that the final sentence of Draft Regulation 63(1) should be deleted. The Convention contemplates the provision of financial incentives, not incentives linked to environmental performance or outcomes. If the sentence is maintained, the “shall”

should be changed to a “may” and the words “and fully reflect any impacts on ecosystem services and the natural capital” should be removed.

- Incentives cannot possibly “fully reflect any impacts” on ecosystems and natural capital and it is not clear what this would mean in practice in this context. At most this sentence should empower the Authority to incentivise performance beyond contractual obligations, not require that all incentives be aimed at this.

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Draft Regulation 63(3)

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~~3. The Council shall ensure that, as a result of the incentives provided to Contractors under paragraphs 1 and 2 above, Contractors are not subsidized so as to be given an artificial competitive advantage with respect to land-based miners.~~

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

- We propose to remove Draft Regulation 63(3) as it may undermine the purpose of financial incentives. We note that any incentive (especially a financial one) is likely to be a form of advantage given to the Contractor to behave in a certain manner.
- Such incentives may almost always be regarded as a form of subsidy. We also note that land-based miners are subject to many forms of financial incentives with, for example, few of them paying 100% of headline royalties and tax rates.

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Draft Regulation 63(4)

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~~[4. Any incentives shall be fully compatible with the policies and principles under Regulation 2].~~

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

- We consider Draft Regulation 63(4) is unnecessary and should be deleted. Draft Regulation 2 sets out a number of principles, approaches and policies that apply to the application of the regulations and decisions made under the regulations. There is no need to reiterate these solely under Draft Regulation 63.
- Further, any incentives must be fully compatible with the Convention and the Part XI Implementation Agreement. It is not for the regulations to create additional limitations on the types of incentives to be offered to contractors and sponsoring States.