

**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 64Ter(1)-(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.

1. The Additional Royalty payable under Regulation 64Bis is in addition to the royalty provided for in Regulation 64.

2. If required under regulation [64Bis], a Contractor, from the [commencement of the Second Period of Commercial Production][fifth anniversary of the date of commencement of Commercial Production], shall pay an Additional Royalty in respect of mineral-bearing ore sold or removed without sale from the Contract Area as provided for in Appendix IV to these regulations.

3. The Authority shall set an Applicable Additional Royalty Rate in respect of the Additional Royalty to be paid by the Contractor to the Authority for the Minerals which constitute polymetallic nodules, as set out in the relevant Standard and applicable Guidelines.

~~4. The Applicable Additional Royalty Rate shall be [8%].~~

5. The Additional Royalty payable to the Authority for each [royalty return period][Calendar Year] shall be equal to X minus Y, where:

(a) X is the product of the Applicable Additional Royalty Rate multiplied by the Aggregate Relevant Metal Value for that [royalty return period][Calendar Year]; and

(b) Y is any amount of Allowable Sponsoring State Tax that has not been deducted in previous [royalty return periods][Calendar Years] when calculating an Additional Royalty payment or a Top-up Profit Share Payment, calculated in accordance with the

Standard and taking into account the Guidelines. In no circumstances shall the Additional Royalty be less than zero.

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

- It is not clear to us how Draft Regulation 64Ter(3) and (4) are intended to operate together. Paragraph 3 specifies that the Authority shall set the Applicable Additional Royalty Rate, but paragraph 4 then purports to establish a set rate. We suggest this needs to be clarified by deleting paragraph 4.
- We also propose that the rate be set in a Standard or Guideline to ensure that it is sufficiently flexible and can be changed without the need to amend the Exploitation Regulations.
- In relation to Draft Regulation 64Ter(5), if the Additional Royalty will be paid alongside the royalty we support the use of the royalty return period as the appropriate time period.

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Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd.

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Draft Regulation 64 Ter(6)-(10)

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6. A payment from a Contractor to the Sponsoring State(s) is an Allowable Sponsoring State Tax, where:

(a) the payment is ~~an actual cash payment made by the Contractor to its Sponsoring State(s) in respect of taxes and/or royalties [related to activities associated with][accruing from seabed mining under]~~ related to the exploitation contract;

(b) there is a [signed letter][receipt] from the Sponsoring State’s tax authority stating the actual cash amount paid by the Contractor to the Sponsoring State for taxes and/or royalties ~~[related to activities associated with][accruing from seabed mining under]~~ the exploitation contract; and

~~(c) where there is a signed letter from an Independent Auditor confirming the actual cash amount paid by the Contractor to the Sponsoring State for taxes and/or royalties [related to activities associated with][accruing from seabed mining under] the exploitation contract.~~

~~7. The Contractor shall pay for the audit referred to in regulation [64Ter.6(c)].~~

~~8. [Draft Regulations 27, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 89 shall apply to the Additional Royalty as they apply to the royalty.~~

~~9. Appendix IV definitions apply to the Additional Royalty as they apply to the royalty.~~

~~Draft Standard sections 1 to 4 apply to the Additional Royalty as they apply to the royalty.]~~

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

- In relation to Draft Regulation 63Ter(6), we consider that the “Allowable Sponsoring State Tax” should not be limited to “actual cash payments”. Taxes may also be able to be paid or set-off through in-kind provision or other financial transactions that result in a benefit to the State.
- We also consider that narrowing the scope of sub-paragraph 6(a) to taxes and royalties “related to activities associated with” or “accruing from seabed mining under” the exploitation contract is not appropriate. We would not want to inadvertently exclude tax payments such as corporate income tax, payroll taxes, or other payments made by the Contractor to its Sponsoring State merely because they cannot be directly connected to specific activities in the Area.
- We also do not consider it appropriate that the Authority require Sponsoring States to obtain an independent audit of the statements they provide. This calls into question the attestations of a sovereign State and is inappropriate.
- Consistent with our intervention opposing requiring an independent audit of equalization measures paid for by the Contractor, we also oppose Draft Regulation 64Ter(7).
- In relation to Draft Regulation 64Ter(8), we consider that it would be clearer and therefore preferable for each of the relevant provisions and definitions to instead be explicitly amended to incorporate the concept of Additional Royalties. The proposed approach here of just cross-referencing the provisions would result in unclear obligations. For example, it is not clear how Draft Regulation 27 can apply to Additional Royalties (as it relates to commercial production), and Draft Regulation 66 states that royalty returns need to be lodged with a prescribed form. To the extent needed, these provisions should be amended so it is clear how Additional Royalties are to be dealt with.