

**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 81(1)

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.

The system of payments adopted under these regulations and pursuant to paragraph 1 (c) of section 8 of the annex to the Agreement, shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area (and in any case before the start of the second stage of Commercial Production) and at intervals thereafter [as determined by the Council, taking into account the level of maturity and development of Exploitation activities in the Area][**in accordance with relevant Standards**]~~[as well as all observed environmental impacts]~~.

Explanation / Comment

Paragraph 1

- One participant proposes to add environmental impacts.

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

- We propose that the first review under Draft Regulation 81(1) should be completed before the start of the second stage of Commercial Production. This will help ensure that the payment rate is clear and appropriate at the time the second stage of Commercial Production commences.
- We also propose to remove the reference in Draft Regulation 81(1) to observed environmental impacts as this is not relevant for the system of payment regulations.

**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 81(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 Council, based on the recommendations of the Commission ~~and in consultation with Contractors~~, may revise the system of payments ~~in the light of changing circumstances~~ and following any review under paragraph 1 above, ~~taking into account the economic viability of the project~~ save that any revision shall only apply in a non-discriminatory manner ~~to existing exploitation contracts by agreement between the Authority and the Contractor~~ ~~after five years of Commercial Production have been completed under that exploitation contract~~ ~~from five years after such revising would be adopted~~ ~~to (i) new exploitation contracts agreed between the Authority and a Contractor after the revised system of payments is in effect; and (ii) existing exploitation contracts~~ only ~~if the Authority and Contractors so agree~~.

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

- We support requiring consultation with Contractors under Draft Regulation 81(1).
- We also propose to remove words “taking into account the economic viability of the project” from Draft Regulation 81(2), as the review contemplated here is not meant to be specific to a project. If needed, this should refer to the viability of the industry as a whole not specific projects. We also propose adding the requirement that any revision shall apply “in a non-discriminatory manner” to existing exploitation contracts.
- We strongly support the requirement that revisions to the systems of payment should only apply to (i) new contracts and (ii) existing contracts with the agreement of the relevant Contractor. Any revision to the system of payments must be consistent with the 1994 Agreement, Section 8(1)(e) of which specifies that “changes may apply to existing contracts only at the election of the contractor. Any subsequent change in choice

between alternative systems shall be made by agreement between the Authority and the contractor.”

- This is a key provision of the 1994 Agreement that provides regulatory certainty and stabilisation to the Contractor.

**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 81(2-5ALT)

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-ALT The Council, based on the recommendations of the Commission and following a review under paragraph 1, may decide to adjust the existing system of payments or introduce a new system of payments, taking into account the level of maturity and development of Exploitation activities in the Area.~~

~~3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to an existing system of payments, or an introduction of a new system of payments, and may consider changes to all applicable Rules Regulations and Procedures (RRPs) [including any relevant Standards and Guidelines].~~

~~4. A review of the system of payments shall consider all Resource Categories unless otherwise decided by the Council.~~

~~5. A change to the system of payments shall only apply by agreement between the Authority and the Contractor for Contract Areas that have already commenced Commercial Production.]~~

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

- We oppose the wording of Draft Regulation 81(2alt)-(5) as it is too detailed and prescriptive. We prefer the original language of Draft Regulation 81(2) with the amendments we propose in our submission on that regulation.
- Proposed Draft Regulation 81(5) also has a very limited application, only applying when Commercial Production has commenced. This is not consistent with the Convention. All

Contractors should benefit from certainty in relation to the conditions they operate under, not just those that have entered Commercial Production.

**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 81(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. Recommendations of the Council to the Assembly under paragraph 2:~~

~~(a) take into account the sufficiency of the benefits that are being generated for humankind as a whole in return for the loss of the common heritage of humankind;~~

~~(b) reflect the objectives contained in Article 13, Annex III of the Convention, including to ensure optimum revenues for the Authority from the proceeds of Commercial Production;~~

~~(b) follow the process and consider relevant matters as set out in the applicable Standard; and~~

~~(c) be informed by consultations with relevant experts and stakeholders including the Legal and Technical Commission, Economic Planning Commission and Finance Committee.~~

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

- We oppose Draft Regulation 83(3) as it is unnecessary and reflects a very limited scope of matters the Commission should look to when making recommendations under this regulation.
- We also consider it inappropriate to highlight one specific objective in Draft Regulation 81(3)(b) (to ensure optimum revenues for the Authority) among many others contained in Article 13 (Annex III).
- We further consider that some of the language used in Draft Regulation 81(3) is inappropriate, e.g., description of deep seabed mining as the “loss of the common heritage of humankind”. Deep seabed mining is not about humankind losing these resources or heritage, it is about putting these important resources to productive use

for the benefit of all humankind. This is the regime envisaged by UNCLOS – whereby all humankind can benefit from the resources of the deep seabed.