

**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:**

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 82(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.**

{1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and ~~at intervals thereafter [as determined by the Council]~~ ~~[and every five years thereafter, applying to all contractors that have commenced Commercial Production, unless otherwise determined by the Council]~~, [taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.]

**Explanation / Comment**

- I note that while paragraph 1(c) of section 8 of the Annex to the Agreement indicates that “a change to a system of payments may apply to existing contracts only at the election of the contractor” no such requirement is laid out regarding a change to rates. The fiscal stabilization provisions currently included in DR 82 are inconsistent with current global norms, as evidenced by the 2020 OECD Guiding Principles on Durable Extractive Contracts. It is proposed to have a simple, regular review of rate of payments every 5 years following the commencement of Commercial Production in the Area.
- One participant previously proposed triggers for price-based royalties. It proposes that the Regulation should be clear about what constitutes a review of system of payments *vis-à-vis* a review of rates of payment. A review of rates of payment should explicitly include reference to price “triggers” under variable royalty rate regimes. Some participants outlined their opposition to the inclusion of “triggers for price-

based royalties” in paragraph 3 on the basis that the terms are ambiguous and appear to be inconsistent with the proposed system of payments set out in the Convention and the Part XI Implementation Agreement.

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

- We support the wording in Draft Regulation 82(1) that provides for a clear timeframe (every five years) for the review of rates of payments rather than just leaving this to be determined by the Council.
- We consider that any change to rates of payment should apply to existing contracts only at the election of Contractors. Contractors are making investment decisions with 20 to 30 year time frames in mind. The Convention recognises this and aims to ensure fiscal stability to respect and encourage such investment, while ensuring a fair return to the Authority.
- We also support the opposition to the inclusion of “triggers for price-based royalties” on the basis that the term is ambiguous.

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Draft Regulation 82(1 ALT)

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ALT

1. The rates of payments under an existing system of payments shall be reviewed by the Council five years from the first date of commencement of Commercial Production in the Area and ~~at intervals~~ every five years thereafter ~~[in accordance with relevant standards]~~ ~~[as determined by the Council taking into account the Resource category and the level of maturity and development of Exploitation activities in the Area.]~~

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

- We propose that clear timing is included in the Draft Regulations to ensure clarity as to at when reviews will be conducted.
- We therefore propose to use the interval of five years for Draft Regulation 82(1 ALT), with wording similar to that used in Draft Regulation 82(1).

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

Draft Regulation 82(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 adjust the rates of payments in the light of such recommendations and consultation, ~~{taking into account the economic viability of the project,}~~ save that any adjustment to the rates of payments may only apply to existing exploitation contracts with the agreement of Contractor [from the end of the Second Period of Commercial Production reflected in appendix IV to these regulations] ~~[after five years of commercial production have been completed under that exploitation contract]].}~~

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

- We oppose any suggestion that the review of rates of payments is project specific. We therefore propose deleting the wording in Draft Regulation 82(2) that requires the Council to take into account the economic viability of the project.
- We propose that any revisions of the rates of payments only apply to existing Contractors with their express agreement.

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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 82(2ter)

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{2 ter. An adjustment to the rates of payments shall [apply to all Contract Areas but shall] only apply by agreement between the Authority and the Contractor for Contract Areas where each of the following conditions are met:

- a) the first five years of Commercial Production in the Contract Area have elapsed; and
- b) the Contractor does not hold exploitation rights to another Contract Area of the same Resource Category for which the first five years of Commercial Production has elapsed.}

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

- We overall support the proposed wording of Draft Regulation 82(2ter).
- We propose amending Draft Regulation 82(2ter)(b) to clarify that the rights referred to are exploitation rights.

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

Draft Regulation 82(3)

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3. Without limiting the scope of any review by the Council, a review under this regulation may include an adjustment to the Applicable Royalty Rate under appendix IV and the manner and basis of the calculation of a royalty ~~[, including triggers for price-based royalties].~~

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

- We oppose the reference to “triggers for price-based royalties” as unnecessary and ambiguous.