

**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:

President's Text

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. 93ter(1) and (2)(a)-(c)

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.

Regulation 93 ter

~~{Consultations~~ Engagement with coastal States}

1. Targeted and proactive ~~consultation~~ engagement with adjacent coastal States ~~and any other coastal States adjacent~~ to the areas of a planned activity when they are potentially most affected States, shall take place at different stages of a plan of work, when documents are being developed and at other appropriate times during and at cessation of exploitation activities, in particular at the development of: [...]

2. Potentially most affected coastal States shall be determined by taking into account the potential effects of the planned activity and includes:

(a) Adjacent coastal States ~~and any other coastal States adjacent~~ to the areas of a planned activity whose exercise of sovereign rights for the purpose of exploring, conserving or managing natural resources may reasonably be affected by the activity; [...]

~~(c) Coastal States identified as potentially affected by the REMP.~~

Comments/remarks

- I have received one proposal for the insertion of a new draft regulation 93 bis with reference to article 142 of the Convention. I am concerned about the interpretation and extent of the application of article 142 of the Convention,

and I have asked the Secretariat to prepare a briefing note in this respect. I invite for discussions of this insertion.

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

- We note that Article 142 of the Convention refers to “consultations” with coastal States in very specific circumstances and for specific purposes, which are narrower than what is set out in Draft Regulation 93 ter.
- As such, we support the President’s concerns if this regulation purports to, or is intended to, interpret Article 142.
- We are also unclear what the reference to “any other coastal States adjacent” is intended to refer to in addition to “adjacent coastal States” in Draft Regulation 93 ter (1).
- The drafting of Draft Regulation 93 ter (1) is also vague and should be clarified in relation when exactly engagement or consultation is required.
- We also propose changing the term “consultation” to the term “engagement.” This would enable on-going engagement and discussions with relevant coastal States as opposed to only formalised “consultations”.
- We also consider that it is not sufficiently clear how the REMP will identify States potentially affected by specific projects. As such, we propose deleting sub-paragraph (c).

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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 Reg. 93ter(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. At the different stages indicated in paragraph 1 above, the following steps will be taken:~~

~~(a) The contractor/sponsoring State informs the Secretary-General that is ready to engage in a target and proactive consultation. The contractor must then provide a geographical description of the area to be covered by the plan of work and may indicate any coastal State adjacent to the areas of a planned activity that they believe to meet the criteria for potentially most affected States based on studies and available knowledge;~~

~~(b) The Secretary-General notifies all States, via Note Verbal, that a plan of work is being prepared for the area "X" and requests them to communicate, within [...] days, whether they meet the criteria for potentially most affected coastal States;~~

~~(c) Coastal States that believe they meet such criteria must justify this based on the criteria outlined above in Section II and other relevant information;~~

~~(d) The Secretary-General informs the contractor/sponsoring State of the coastal States that have communicated that they meet the criteria for potentially most affected;~~

~~(e) The contractor must then undertake targeted and proactive consultations with the coastal States in question [to be further developed in a standard/guideline, which may address inter alia the following issues: (i) the provision of access to information to the coastal States in question relating to the environmental impacts~~

~~of the planned activity; (ii) consideration of the views and comments of the coastal States in question; (iii) provision of written responses specifically addressing such views and comments, in particular with respect to potential impacts in areas under national jurisdiction; (iv) revision of the planned activity, if appropriate].~~

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

- Draft Regulation 93 ter (4) is extremely detailed and prescriptive. As such, its contents are better suited to a Standard or a Guideline rather than a regulation. This is particularly true given the unclear timing requirements in Draft Regulation 93 ter (1).
- We also consider that the detail of such engagement or consultation with Coastal States would be best addressed by the sub working group on stakeholder consultation and engagement to ensure that a consistent approach is taken in the Draft Regulations.