

**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.

Schedule, Definitions

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.

"Good Industry Practice" ~~["Best Industry Practice"]~~ means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide, ~~[based on Best Environmental Practice, which is based on Best Available Scientific Information and Best Available Technology]. [Employment of the latest widely accepted stage of development (state of the art) of processes, of facilities or of methods of operation, consistent with the Fundamental Principles, including using skill, diligence, prudence and foresight which is an would reasonably be expected to be applied by a skilled and experienced person engaged in the marine mining industry.]~~.

"Guidelines" means ~~such~~ documents that provide guidance ~~[support on the implementation of the Regulations] on technical and administrative matters~~, issued by ~~the organs of the Authority~~, ~~[Commission and the Secretary General, respectively]~~ pursuant to regulation 95. ~~[Guidelines will also clarify documentation requirements for an application, detail process requirements (e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions. Guidelines are generally considered as recommendatory].~~

~~[Alt "Guidelines" means a document that supports the implementation of the Regulations from an administrative and technical perspective. Guidelines will also clarify documentation requirements for an application, detail process requirements~~

~~(e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions. The Guidelines are recommendations and not requirements].~~

~~“Material Change” means a [substantial] [significant] change that affects [to] the basis on which [the] [an] original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, [changes to harmful effects of activities on the Marine Environment, [other environmental effects or effects on stakeholders], the availability of new knowledge or technology and changes to operational management that are to be considered in light of the applicable Guideline[s].~~

~~{Alt “Material Change” means a substantial or significant change to the basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority.}~~

~~{Alt 2 “Material Change” means a change that effects the fundamental basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority}.~~

~~“Standards” means such technical and other standards and protocols, including performance and process requirements, adopted pursuant to regulation 94. [Standards have to be considered as mandatory.]~~

~~{Alt.1 “Standards” means methodological, procedural, technical or environmental rules that are necessary to implement the regulations and to ensure a coherent approach to monitoring and assessment, including performance and process requirements, adopted pursuant to regulation 94. Standards are legally binding on Contractors and the Authority”}.~~

~~{Alt.2. “Standards” means such documents adopted by the Authority pursuant to regulation 94.}~~

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

- In relation to the proposed definition of “**Good Industry Practice**”, we maintain our opposition to the additional language proposed to be added to this definition. The proposed text is overbroad, excessive and not clearly defined. There is also no need to set out the level of detail proposed here given the meaning of the defined term is clear. We propose retaining the original definition and considering using Guidelines to clarify this key concept.
- In relation to the proposed definition of “**Guidelines**”, we prefer the original definition proposed which is simple, short and adequate to cover all the relevant concepts. We should avoid making these regulations and definitions more

prescriptive than necessary and have proposed amendments to ensure this.

Definitions should also not contain substantive obligations or provisions.

- In relation to the proposed definition of “**Material Change**”, we prefer the Alt. 2 definition as it sets a clear standard and threshold for what a Material Change is.
- In relation to the proposed definition of “**Standards**”, we prefer the Alt.2 definition as it is a simpler, straightforward and flexible definition.

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"**Closure Plan**" means the document referred to in annex VIII.

~~[Alt "**Closure Plan**" means a document that contains an integrated environmental, social and economic base case for decommissioning, closure and postclosure activities and conditions against which future monitoring can be compared. It will be revised through the lifetime of the contract and must be considered as an integral part of operational planning.]~~

"**Commercial Production**" shall be deemed to have begun where a Contractor engages in sustained large-scale recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information-gathering, analysis or the testing of equipment or plant.¹

~~"**Contractor**" means a contractor having a contract in accordance with Part III and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.~~

¹ This wording is taken from article 17 (2) (g) of annex III to the Convention. Article 17 (1) (b) (xiii) of annex III to the Convention requires the Authority to provide for a definition of commercial production, reflecting the objective criteria under article 17 (2) (g). A clearer definition of commercial production will be needed.

~~{Alt “Contractor” means a party to an exploitation contract (other than the Authority) in accordance with Part III of these regulations} ~~{and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.}~~~~

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

- In relation to the proposed definition of “**Closure Plan**”, we prefer the original language over the alternative. The original definition is simple and effective. The alternative definition introduces new concepts such as “base case” and obligations that should not part of definitions.
- In relation to the proposed definition of “**Commercial Production**”, we agree with the President that a clearer definition is needed that properly reflects the objective criteria required under the Convention.
- In relation to the proposed definition of “**Contractor**”, we prefer the alternative definition but propose removing references to subcontractors, employees and agents. The Contractor is the sole counterparty to the Contract. It’s employees or subcontractors cannot qualify as a Contractor.

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Informal Working Group – Environment.

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.

Schedule – ‘Damage to the Marine Environment’

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.

~~[[“Damage to the Marine Environment” means [...]~~

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

- We propose to remove the definition of “Damage to the Marine Environment” as it is unnecessary given that the threshold of harm is already defined in the Convention (i.e., harmful effects or Serious Harm).
- There is no need to create a separate defined term for the same concept, as it invites ambiguity and confusion.

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Schedule – ‘Environmental Management System’

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.

~~{Alt. 1 “Environmental Management System” means that part of the overall management system applied by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals and environmental performance.}~~

~~{Alt. 2 means the part of the overall management system applied by a Contractor that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining environmental policy, goals, objectives and environmental performance.}~~

{Alt. 3 “Environmental Management System” means part of the management system used to manage environmental aspects, fulfil compliance obligations, and address risks and opportunities.}

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

- We support the Alt.3 definition of “Environmental Management System” as the simplest and clearest option of the three proposed definitions.

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Schedule – ‘Environmental Effect’

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.

“**Environmental Effect**” means any [material] consequences in the Marine Environment, [~~including baseline studies for Underwater Cultural Heritage,~~] arising from the conduct of Exploitation activities, [whether][being] positive, [negative], direct, indirect, temporary or permanent, ~~or [c]Cumulative environmental effect arising over time or in combination with other effects or impacts stressors and activities in the same area, including those not regulated by the Authority.~~

[Alt 1. “**Environmental Effect**” means any material consequences in the Marine Environment arising from the conduct of Exploitation activities, whether positive, negative, direct, indirect, ~~cumulative~~, temporary or permanent.]

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

- We note that Cumulative Environmental Effect is proposed as a separate defined term, and therefore suggest deleting reference to “Cumulative environmental effect” from the definition of “Environmental Effect”.
- We also support the Alt.1 definition of “Environmental Effect” with the deletion of “cumulative”.

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Schedule – ‘Good Industry Practice’

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.

~~“Good Industry Practice” ["Best Industry Practice"] means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide and includes meeting the performance requirements under any Rules of the Authority, and relevant Standards. [based on Best Environmental Practice, which is based on Best Available Scientific Information and Best Available Technology]. [Employment of the latest widely accepted stage of development (state of the art) of processes, of facilities or of methods of operation, consistent with the Fundamental Principles, including using skill, diligence, prudence and foresight which is an would reasonably be expected to be applied by a skilled and experienced person engaged in the marine mining industry]~~

~~Alt 1. the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide.~~

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

- We support the Alt.1 definition of “Good Industry Practice”. We maintain that a simpler approach to definitions is preferable overall.

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Schedule – ‘Marine Environment’

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.

“**Marine Environment**” includes the physical, chemical, [oceanographic] geological, genetic, and biological components, conditions and factors which interact and determine the productivity, state, condition and quality and connectivity of the marine ecosystem(s), [~~the underwater cultural heritage~~], the waters of the seas and oceans and the airspace above those waters, [species, biodiversity, ecosystems,] as well as the seabed and ocean floor and subsoil thereof.

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

- Given the trend that the Draft Regulations are specifically referring to “Underwater Cultural Heritage” in relevant provisions, we consider it is not necessary to also include this reference in the definition of “Marine Environment” and support its deletion.
- Given the nature of “Underwater Cultural Heritage” this is better dealt with through considered and appropriate references within relevant regulations, rather than through expanding the scope of the Marine Environment.

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Schedule – ‘Preservation’

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.

[“Preservation” means ~~the maintenance of the environment, lands and natural resources in a pristine form, without anthropogenic use beyond access.~~]

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

- We propose removing the term “pristine form” from the definition of “Preservation.”
- It is unclear what the term entails, though it appears to set a standard that is unrealistic or impossible to achieve in practice.

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Schedule – ‘Resources’

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.

“Resources” means all solid, liquid or gaseous mineral resources, [mineral-bearing ore, associated minerals, or mixture thereof] in situ in the Area at or beneath the seabed, including: ~~(a) polymetallic nodules, defined as any deposit or accretion of nodules, on or below the surface of the deep seabed, which contain metals such as manganese, nickel, cobalt and copper; (b) polymetallic sulphides, defined as hydrothermally formed deposits of sulphides and accompanying mineral resources in the Area which contain concentrations of metals such as copper, lead, zinc, gold and silver; and (c) cobalt crusts, defined as cobalt-rich ferromanganese hydroxide/oxide deposits formed from direct precipitation of Minerals from seawater onto hard substrates containing concentrations of metals such as cobalt, titanium, nickel, platinum, molybdenum, tellurium, cerium and other metallic and rare earth elements.~~

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

- We propose removing the detailed description of what “Resources” may include. We consider that this level of detail is unnecessary for inclusion in the Draft Regulations.
- Furthermore, the term “Resources” is already defined in the Convention and encapsulated by the first part of this sentence.

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Schedule – ‘Serious Harm’

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.

“**Serious Harm**” means any effect from activities in the Area on the Marine Environment which represents a[n **[unlawful]]** significant adverse change in the Marine Environment determined according to the rules, regulations and procedures adopted by the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific **[Evidence] [Information]**.

~~[Alt. “**Serious Harm to the Marine Environment**” means an Environmental Effect that, individually in combination or cumulatively meets any of the following criteria:~~

~~(a) it is not likely to be redressed through natural recovery within a reasonable period;~~

~~(b) it impairs the ability of affected populations to replace themselves;~~

~~(c) it degrades the long-term natural productivity of habitats or ecosystems;~~

~~(d) causes, on a more than temporary basis, a significant loss of species richness or biological diversity, including community structure, genetic connectivity among populations, ecosystem functioning and ecosystem services on the seabed, at the sea surface, and in midwater and in the benthic boundary layer, or habitat; or~~

~~(e) criteria for significance contained in the relevant Regional Environmental Management Plan, or Standards.]~~

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

- We support the original definition of “Serious Harm” as compared to the alternate proposal to define “Serious Harm to the Marine Environment”.
- We consider the defined term “Serious Harm”, when read with the definition of “Marine Environment”, is sufficiently clear. Creating a new term to cover the same concept invites ambiguity, contradiction and confusion.
- We are also concerned the proposed new definition is vague and may elevate all environmental impacts to being “Serious Harm to the Marine Environment” given that any “impairment” or “degradation” could meet its terms. Such an elevation to the definition would be inconsistent with the object and purpose of an exploitation phase pursuant to Part XI of the Convention.
- We also object to the inclusion of subparagraph (e) as it is important that this critical definition has clear boundaries and cannot be arbitrarily amended in the future.

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Schedule – ‘Best Available Techniques’

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.

Alt 2. [**Best Available Techniques**” means the most appropriate processes, within reasonable technical and economic constraints, facilities or methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the protection of the Marine Environment from the harmful effects of Exploitation activities, taking into account the guidance set out in the applicable Guidelines.]

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

- We consider the Alt.2 definition of “Best Available Techniques” to be the clearest option among the proposed definitions, with appropriate limitations of reasonableness embedded.

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Schedule – ‘Cumulative Environmental Effect’

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.

“Cumulative Environmental Effect” [means any [material](#) consequences in the Marine Environment arising over time from the conduct of Exploitation activities or in combination with other stressors and activities in the same area, including those not regulated by the Authority.]

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

- We propose that “Cumulative Environmental Effect” be defined with reference only to “material” consequences to avoid an overly broad interpretation that renders monitoring and compliance obligations unworkable.
- Adding the term “material” will also make the definition of “Cumulative Environmental Effect” consistent with the definition of “Environmental Effect”.

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PART III**

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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.

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Enclosure V - Definitions

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.

~~["Income" has the meaning given to 'GloBE Income' in the [Pillar 2 Global Anti-Base Erosion Model Rules published by the OECD] from time to time.]~~

~~["monopolize" means the ability to control over 75 per cent of the estimated annual volume of similar mineral-bearing ore exploited, produced or removed from the Area after Commercial Production has occurred in respect of at least two exploitation contracts.]~~

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

- We note that proposed definition of “Income” would change in line with any changes made in the OECD. We suggest it may be preferable to ensure that any changes to the definition of Income require approval by an appropriate body in the Authority. This is particularly important given the central role of the definition in certain financial determinations. A major change to the definition could have substantial impacts upon Contractors’ liabilities and so should be subject to appropriate review.
- Consistent with our submissions on Draft Regulation 23(5), we also consider that it is beyond the remit and expertise of the Authority to attempt to determine a definition of “monopolize” for the purpose of activities in the Area. It is also not necessary as explained in that submission.