

**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.