

**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:**

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.**

Draft Reg. 44(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 Authority, Sponsoring States, the Enterprise, Contractors and flag States [~~and States competent for vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority~~] shall each within their plan, adopt, implement and update all measures necessary for ensuring effective protection of the Marine Environment ~~including but not limited to rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species~~ from harmful effects directly ~~or indirectly~~ resulting from Exploitation in the Area- in accordance with the Convention, the Agreement, the Rules of the Authority, Standards and taking into account Guidelines including those referred to in Regulation 45, ~~international law~~ and the applicable Regional Environmental Management Plan.

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

- We propose removing the additional references to “rare and fragile ecosystems” and “the habitat of depleted, threatened and endangered species” in Draft Regulation 44(1). These aspects are covered by the defined term “Marine Environment.”
- There are also existing definitions for what constitutes “near threatened” and “endangered” (such as by the International Union for Conservation of Nature). However, this is not the case for “depleted”. The Draft Regulations should avoid unnecessarily creating new categories through using new terms such as “depleted”.
- We also consider the reference to “international law” in Draft Regulation 44(1) is unnecessary. The Convention itself already incorporates all relevant aspects of international law that are consistent with its text. Therefore, the reference to “the Convention” sufficiently captures all relevant aspects of international law for the purposes of Draft Regulation 44(1).

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Draft Reg. 44(1)(a)(i)

**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. ...To this end:

(a) In adopting and keeping under periodic review rules, regulations and procedures, as well as the Standards and Guidelines in accordance with the Convention and the Agreement, the Authority shall:

(i) Apply the precautionary approach and ~~[the]~~ [an] ecosystem-based approach to the assessment, management and ~~avoidance prevention~~ of risk of ~~Serious harm~~ Harm to the Marine Environment from Exploitation in the Area,

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

- Consistent with our previous written submission on Draft Regulation 44(1)(a)(i), we consider that the term “prevention of risk of harm” is not appropriate given that it is impracticable if not impossible to “prevent” risk. Risks can only be avoided, minimized, or reduced. As such, we propose placing the term “prevention” with “avoidance.”
- We also propose replacing the undefined and ambiguous term “harm” with the defined and clear term “Serious Harm”.
- “Serious Harm” is a key concept for setting out – as here in Draft Regulation 44alt (1)(a) – the level of protection accorded to the Marine Environment by the Authority, the Contractors and other stakeholders.
- We know that exploitation activities will have an impact upon the environment. This is unavoidable. As such, when considering what impact we are seeking to avoid or

manage, we need to ensure a specific and clear standard is employed – namely the standard of Serious Harm.

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Draft Reg. 44(1)(a)(iii)

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1. ...To this end:

(a) In adopting and keeping under periodic review rules, regulations and procedures, as well as the Standards and Guidelines in accordance with the Convention and the Agreement, the Authority shall:

[...]

(iii) ~~Ensure~~ Integrate Best Available Scientific information, traditional and indigenous knowledge in decision-making, including all risk assessments and management undertaken in connection with environmental assessments, acknowledging knowledge gaps, and uncertainties and the management and response measures taken under or in accordance with Best Environmental Practices;

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

- We oppose the proposed change from “Integrate” to “Ensure” in Draft Regulation 44(1)(a)(iii). The change is not grammatically correct, as the sub-paragraph refers to the use of certain information and knowledge “in decision-making.”
- “Integrate” is a clear concept, requiring the Authority to appropriately make use of the specified information and knowledge sources in its decision-making. “Ensure” is unclear, and its use in this sub-paragraph does not provide the Authority with meaningful guidance on what it means to “ensure” the specified information and knowledge sources.

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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. 44(1)(c)

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1. ...To this end: [...]

(c) In taking all necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment and its ecosystem structure, function and resilience, including the adjacent coastlines, and of interference with the ecological balance of the Marine Environment which includes ecosystem ~~integrity~~ structure, function and resilience arising from its Exploitation in the Area, the Enterprise and Contractors shall [implement, mutatis mutandis, the measures set out under paragraph (a)(i) to (iii) above and] demonstrate accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation, including through Stakeholder participation and the prompt public release of environmental data and information on their respective activities at regular intervals and in an accessible format [~~consistent with best scientific practices~~]. In so doing, the Enterprise and Contractors shall apply a priority order to avoid, minimize, Mitigate, [~~and if feasible~~] remediate, and restore ~~harm to~~ the Marine environment and adapt the necessary measures according to [~~newly~~] obtained information and data.

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

- We oppose the use of “ecosystem integrity” in Draft Regulation 44(1)(c) and recommend a return to “ecosystem structure, function and resilience.”
- “Ecosystem integrity” is ambiguous and it is not defined in the Draft Regulations. It is also inconsistent with the earlier reference in Draft Regulation 44(1)(c) to “ecosystem structure, function and resilience.” Using a new term – “integrity” – later in the sentence suggests it is referring to a different concept, which is not the case.

- We also propose a minor amendment as it is not clear what the reference to “restore harm to” to the Marine Environment was intended to refer to.

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Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd.

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Draft Reg. 44(2)

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~~2. In adopting laws and regulations, in accordance with the Convention, to prevent, reduce and control pollution of the Marine environment from Exploitation undertaken by vessels, installations, structures, [robots] and other devices flying their flag or of their registry or operating under their authority, as the case may be, States shall implement, mutatis mutandis, the measures set out under paragraph 1(a)(i) to (vi) above.~~

[...]

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

- Consistent with our previous submissions on Draft Regulation 44(2), we consider that the current drafting inappropriately encroaches upon the rights and responsibilities of States Parties regarding their own domestic laws and regulations, and so should be deleted.
- It is not appropriate for the Draft Regulations to create a prescriptive regime regarding how States Parties are to comply with their obligations. Instead, States Parties should be free to choose the method and approach that is most suited to their specific circumstances, which will differ depending on the particular situations of various States Parties.
- If Draft Regulation 44(2) is retained, we would propose removing the additional term “robots”, which is unnecessary as Draft Regulation 44(2) already covers “other devices.”