

**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:

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 alt (1)(a)-(f)

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.

(a) Apply the precautionary approach and the ecosystem-based ~~management~~ approach to the assessment management and ~~prevention~~ avoidance of risk of Serious Harm to the Marine Environment from Exploitation in the Area;

[...]

(d) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation in the Area;

(e) ~~Apply the polluter pays principle having due regard to the public interest~~ Take into account the approach that the polluter should bear the cost of pollution, endeavour to promote practices whereby those engaged in exploitation activities bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest; and

(f) Ensure that damage or hazards are not transferred ~~to~~ from one part of the marine environment to another and that one type of pollution is not transformed into another one. This is especially related to avoiding toxic, persistent and bio accumulative substances.

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

- We have a series of comments and alterations on Draft Regulation 44 alt (1)(a)-(f).

- Draft Regulation 44 alt (1)(a): We propose deleting the first reference to “management” as duplicative and unnecessary given the later reference to the term “assessment management” in the same sentence.
- We also propose replacing the term “prevention” with “avoidance” given that risks, as we have explained in our written submissions on Draft Regulation 44(1)(a)(i), cannot be “prevented.”
- Finally, we propose replacing the undefined and ambiguous “harm to the Marine Environment” with the defined and clear term “Serious Harm”.
- “Serious Harm” is a key concept for setting out 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.
- Draft Regulation 44 alt (1)(d): We support the simpler drafting proposed here rather than the original Draft Regulation 44(1)(d) and recommend its adoption.
- Draft Regulation 44 alt (1)(e): We prefer the earlier language clearly outlining the requirements for the Authority to regulate pollution prevention and control for activities in the Area and propose their re-insertion. The term “polluter pays principle” is less clear and can be applied in a variety of ways, giving the Authority less meaningful direction.
- Draft Regulation 44 alt(1)(f): We propose minor textual amendments to clarify the drafting regarding damage and hazards transfer in the Marine Environment, consistent with the earlier version of this sub-paragraph. This also makes the language more consistent with Article 195 of the Convention.

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Draft Reg. 44 alt (1)

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1. The Authority, sponsoring States, the Enterprise, Contractors, flag States and the States of registry of or having authority over installations, structures and other devices shall take necessary measures to ensure effective protection of the Marine Environment from harmful effects which may arise directly ~~or indirectly~~ from Exploitation in the Area, in accordance with Regulations and Standards and taking into account Guidelines referred to in regulation 45 and the relevant Regional Environmental Management Plan and to this end shall, as applicable in their respective areas of competence. 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:

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

- We support working on the basis of Draft Regulation 44 alt as opposed to the original Draft Regulation 44.
- We propose removing the phrase “or indirectly”, to conform Draft Regulation 44 alt (1) to the text of Article 17(2)(f) of Annex III of the Convention.
- Additionally, we note that Draft Regulation 44 alt expands the scope of the entities that sub-paragraphs (a)-(f) apply to as compared to the original Draft Regulation 44. The matters listed in these sub-paragraphs are particularly relevant to the work the Authority. However, it is not clear how they would generally apply in relation to other entities.
- As such, we propose that these sub-paragraphs should primarily apply to the Authority’s actions in line with the original drafting and propose insertions to that effect here.

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Draft Reg. 44 alt (3)

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3. No regulation in this Part shall be interpreted as preventing sponsoring States, the Enterprise and Contractors from taking, individually or jointly, more stringent measures in accordance with international law with respect to the prevention, reduction and where practicable elimination of ~~detrimental effects on~~ harmful effects to the marine environment

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

- We propose replacing the unclear term “detrimental effects” with “harmful effects” in Draft Regulation 44 alt (3).
- We consider the term “harmful effects” is appropriate here as compared to Serious Harm, as Serious Harm is a prohibitive standard and must not be allowed to occur in any event.