

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS  
DURING THE 29<sup>TH</sup> SESSION: COUNCIL - PART I**

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.im](mailto:council@isa.org.im).

**1. Name of Working Group:**

Informal Working Group on 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.**

Annex X, Section 7

**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.**

**Section 7**

**Responsibility and liability**

7.1 [...] ~~For the avoidance of doubt, strict liability in this context applies the polluter pays principle, and means, it is not necessary to prove that a Contractor intended to commit or was reckless as to committing a wrongful act or omission, it is necessary only to demonstrate unpermitted damage or harm arose as a result of a Contractor's wrongful act for the Contractor to be held liable for that damage or harm.~~

7.2 The Contractor shall indemnify the Authority, its employees, subcontractors and agents against all claims and liabilities of any third party arising out of any wrongful environmental damage caused by Contractor activities that were not foreseen in the Plan of Work or that arise from a breach of any conditions of approval, including arising from activities of the Contractor. ~~Wrongful acts or omissions of the Contractor and its employees, agents and subcontractors, and all persons engaged in working or acting for them in the conduct of its operations under this Contract.~~

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

- We propose to remove the last sentence of paragraph 7.1 as it is unnecessary and imposes an unfair and too high a standard upon Contractors. The paragraph itself does not refer to ‘strict liability’ so there is no need to define the term here. Nor is there any need to refer to the concept given that strict liability is not the appropriate standard for responsibility and liability in this context and goes beyond the liability provisions in the Exploitation Contract.
- We are also concerned that the indemnity contained in paragraph 7.2 is too broad and could expose Contractors to liabilities for a range of inappropriate claims that arise from

actions that are entirely lawful and allowed under the Regulations. We suggest that such an indemnity be limited to “wrongful” or “unlawful” acts.