

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS
DURING THE 29TH 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.jm.

1. Name of Working Group:

Informal Working Group on Institutional Measures

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 Regulation 10(5)

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.

Regulation 10 [IWG IM]

Preliminary review of application by the Secretary-General

[...]

5. Where an application concerns a Reserved Area [that is not or has not been subject to an exploration contract](#), the Enterprise shall be given an opportunity to decide whether it intends to carry out activities in the area in accordance with Article 9 of Annex III to the Convention, ~~and Section 2 of the Annex to the Agreement~~. [\[and Section 2 of the Annex to the Agreement\]](#).

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

- We continue to strongly oppose Draft Regulation 10(5) as unnecessary and inconsistent with the approach contemplated by Article 9 of Annex III of the Convention. It would effectively provide the Enterprise with multiple opportunities to decide whether it wishes to undertake activities in a reserved area, potentially resulting in the unlawful expropriation of significant investments by contractors. This would be unfair and unlawful under the Convention.
- Under Article 9(1) and (4) of Annex III of the Convention, the trigger for the Enterprise to make a decision in regard to whether it will carry out activities in a reserved area is the Authority’s receipt of a notification by a developing State Party (or its sponsored entity) that it “wishes to submit a plan of work” with respect to that reserved area.
- It is only at the point in time that the Enterprise is entitled to decide to exploit the relevant reserved area. It would be inconsistent with that regime, and generally unfair to contractors and State Parties undertaking activities in the Area, to provide the Enterprise

with an *additional* opportunity to consider whether it wishes to carry out activities in an Area at the point in time when an application for a plan of work for exploitation is submitted.

- This would be particularly problematic given that at the point in time that Draft Regulation 10(5) will apply, the applicant will have spent considerable time and money exploring the relevant area and engaging in preparatory work for its application. To allow the Enterprise to step in at this late stage would amount to the expropriation of the significant investment by the contractor.
- As such, Draft Regulation 10(5) should be deleted. If it is retained, at the very least it should be limited to exclude reserved areas that have already been subject to exploration contracts.