

**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:

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.

Draft Regulation 28(1) and (3)

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 28 [President's Text]

Maintaining Commercial Production

1. The Contractor shall maintain Commercial Production in accordance with the Exploitation Contract and the Plan of Work annexed thereto, including the Mining Workplan and any amendments made from time to time, and these Regulations, and market conditions. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates contemplated in the ~~Feasibility Study~~ Mining Workplan, including any amendments made from time to time.

[...]

3. Notwithstanding paragraph 1 above, the Contractor shall immediately ~~reduce or~~ suspend production whenever such reduction or suspension is required to protect the Marine Environment from Serious Harm or threat of Serious Harm, ~~from Serious Harm or a threat of Serious Harm~~ or to protect human health and safety ~~to protect the Marine Environment from Serious Harm or a threat of Serious Harm, to protect human health and safety or to protect human remains, objects or sites of archaeological or historical nature~~. A Contractor shall notify the Secretary-General and the Sponsoring State or States of ~~such an unplanned~~ reduction or suspension of production that is expected to last for a significant period of time as soon as is practicable and no later than ~~[72] [24] 3 months~~ hours after production is reduced or suspended.

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

- We propose to add language to Draft Regulation 28(1) that clarifies that Contractors shall manage the recovery of the minerals at rates contemplated in their Mining Workplan, which will also be regularly updated. Mining is an iterative process and the rates of recovery will not be locked in as at the time of the Feasibility Study. As such it is important Draft Regulation 28(1) recognises this and refers to the document that will best reflect how mining will take place.

- With respect to subparagraph 3, the proposed deletion of the reference to Serious Harm in Draft Regulation 28(3) would create a blanket and broad obligation to suspend production “to protect the Marine Environment”. This lacks clarity and an appropriate threshold of impact.
- All human activities have some level of impact upon the environment. It is not feasible nor reasonable to require suspension of production upon the nebulous trigger of general ‘protection’ of the Marine Environment, particularly when other regulations set clear thresholds when regulatory action is required such as to prevent Serious Harm.
- As such, the deleted language should be maintained to ensure it is clear what the Marine Environment is to be protected from in the context of reducing or suspending production.
- We also note that there is no clarity on what kind of “suspension” qualifies for the notification to the Secretary-General and the Sponsoring State. We note that circumstances when suspension may be required may be as simple as a crew change, routine maintenance of the collector, or a storm that prevents unloading of the production vessel. All such circumstances may be unnecessarily captured by the wording as it stands now, and we have therefore proposed textual changes above to resolve this issue. We consider that the factors that need to be considered include (i) whether such suspension is planned or unplanned and (ii) the length of suspension.
- We also note that the timeframe of 72 hours for notifications is unrealistic. Contractors monitor their production targets in aggregate over weeks. It is customary to provide market disclosure on production on quarterly basis and therefore we do not consider that the notification to the Secretary-General and the Sponsoring State should be required sooner than within 3 months.