

**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:**

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 33

**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 33** *[President's Text]*

**Preventing and responding to Incidents**

1. The Contractor shall not proceed or continue with Exploitation if it is reasonably foreseeable ~~[or likely]~~ that proceeding or continuing would cause or contribute to an Incident, ~~or reduce~~ or prevent the effective management of such Incident.

2. The Contractor shall, upon becoming aware of an Incident:

(a) Notify its Sponsoring State ~~or States, States adjacent to the contract area likely to be affected~~ and the Secretary-General ~~[without undue delay] [at the earliest time possible immediately, but no later than 24 hours from the moment the Contractor becomes aware of the Incident];~~

~~{{(a).Alt. Notify its Sponsoring State or States, [relevant adjacent Coastal States] [States adjacent to the contract area likely to be affected] and the Secretary-General immediately, as soon as reasonably practicable but no later than 24 hours from the time the incident occurred;}}~~

(b) Immediately implement, where applicable, the Emergency Response and Contingency Plan approved by the Authority for responding to the Incident;

(c) Undertake promptly, and within such time frame as stipulated, any instructions received from the Secretary-General in consultation with the Sponsoring State or States, flag State, ~~[States adjacent to the Contract Area likely to be affected] [coastal State]~~ or relevant international organizations, as the case may be;

(d) Take any other measures necessary in the circumstances to limit the adverse effects of the Incident; ~~and~~

(e) Record the Incident in the Incidents Register, which is a register to be maintained by the Contractor on board a mining vessel or Installation to record any Incidents or notifiable events under Regulation 34; and

(f) Following resolution of an Incident, provide the [Secretary-General and its Sponsoring State or States] ~~[Authority]~~ with an Incident report which details the Incident and any corresponding data on its nature, scale, and impacts, the Contractor's response, and lessons learned [and any proposed measures to minimise or reduce the risk of similar Incidents occurring in the future].

[X]. When the Secretary-General has been notified by a contractor or otherwise becomes aware of an Incident or other matter related to a contractor's activities in the Area that has caused or is likely to cause Serious Harm to the Marine Environment or harm to human life or safety, the Secretary-General shall cause a general notification of the Incident or matter to be issued, shall notify in writing the contractor and the sponsoring State or States, and shall report immediately to the Legal and Technical Commission, to the Council and to all other members of the Authority. A copy of the report shall be circulated to competent international organizations and to concerned subregional, regional and global organizations and bodies. The Secretary-General shall monitor developments with respect to all such Incidents or matters and shall report on them as appropriate to the Commission, the Council and all other members of the Authority.

[X]. Pending any action by the Council, the Secretary-General shall take such immediate measures of a temporary nature as are practical and reasonable in the circumstances to prevent, contain and minimize serious harm or the threat of Serious Harm to the marine environment, harm to human life, or damage to submarine cables, pipelines or Installations. Such temporary measures shall remain in effect for no longer than 90 days, or until the Council decides at its next regular session or a special session, what measures, if any, to take pursuant to paragraph [X] of this regulation.

[X]. Any immediate measures of a temporary nature issued by the Secretary-General are binding upon all parties they are directed to. Member States shall take all measures to achieve compliance with such immediate measures and refrain from interfering with or undermining their effects while they are in force. In particular Member States shall take all measures reasonably available to them to ensure that their natural and juridical persons and ships flying their flag comply with an immediate temporary measure.

[X]. After having received the report of the Secretary-General, the Commission shall determine, based on the evidence provided to it and taking into account the measures already taken by the contractor, which measures are necessary to respond effectively to the Incident or matter and shall make its recommendations to the Council.

[X]. The Council shall consider the recommendations of the Commission.

[X]. The Council, taking into account the recommendations of the Commission, the report of the Secretary-General, any information provided by the contractor and any other relevant information, may issue emergency orders, which may include orders for the suspension or adjustment of operations or other orders directed at entities undertaking activities in, operating in, or undertaking actions related to or connected with activities in the Area, as may be reasonably necessary to prevent, contain and minimize serious harm or the threat of serious harm to the marine environment, harm to human life, or damage to submarine cables, pipelines or Installations.

[X]. If a contractor or any other relevant entity operating in the Area does not promptly comply with an emergency order, the Council shall take by itself or through arrangements with others on its behalf, such measures as are necessary to prevent, contain and minimize serious harm or the threat of serious harm to the marine environment, harm to human life, or damage to submarine cables, pipelines or Installations.

[X]. Member States shall take all measures reasonably available to them to ensure that their natural and juridical persons and ships flying their flag comply with an emergency order.

3. The Secretary-General shall promptly report any Contractor that fails to comply with this Regulation to its Sponsoring State or States, [States adjacent to the Contract Area [\[likely to be affected\]](#)] and the flag State of any vessel involved in the Incident for consideration of the institution of legal proceedings under national law.

4. The Secretary-General shall report such Incidents and measures taken to the Commission and the Council at their next available meeting, [and publish a copy of the Incident report at the Authority's website.](#)

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

- Unlike the Exploration Regulations, we note that the Draft Regulations do not yet have a complete regime for the making of emergency orders in response to Incidents or other matter related to a Contractor's activities in the Area that has caused or is likely to cause Serious Harm to the Marine Environment or harm to human life or safety. We consider this is an important part of any regulatory regime, and all the more so given the lack of clarity that was seen in the Authority's response to the Secretary-General's use of the Exploration Regulations regime in late 2023.
- The disagreements, confusion and ambiguity created by the Secretary-General's use of the Exploration Regulations regime highlights the need for clear and effective language in the Draft Regulations.
- We have modelled our proposed edits to Regulation 33 on the current regime for responding to incidents and risks contained in the Exploration Regulations.
- In responding to Incidents or other matter related to a Contractor's activities in the Area that has caused or is likely to cause Serious Harm to the Marine Environment or harm to human life or safety, the Secretary-General should issue written notifications to the

involved parties and report to the Authority regarding same, with copies circulated to international organizations and other concerned bodies.

- The Secretary-General should also maintain an ongoing monitoring and reporting role to the Authority throughout the Incident.
- Importantly, the Secretary-General should be empowered to issue immediate measures of a temporary nature to address various urgent threats, harms or damages (to the marine environment, human life, or underwater installations like cables and pipelines). These measures should last no longer than 90 days, and should be subject to the Council's review, amendment, removal and recommendations.
- The Council should be specifically tasked with considering the recommendations of the Commission, the report of the Secretary-General and other relevant information when issuing emergency orders, which may include suspending or adjusting operations in the Area or issuing instructions to other entities acting in the Area.
- The Regulations should also include scope for the Council to issue practical measures in the event of non-compliance with an emergency order.
- Incorporating a clear and effective response system addressing Incidents in the Area supports regulatory clarity and ensures that the Authority, its member States, and all entities operating in the Area understand their roles and responsibilities if such Incidents arise.