

**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.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.

Draft Regulation 44

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 44 [IWG ENV]

General Obligations

1. The Authority, Sponsoring States, the Enterprise, Contractors, flag [port States] [and the States of registry of or having authority over installations, structures, robots, and other devices] [where they are members of the Authority] shall take necessary measures to ensure effective Protection of the Marine Environment from ~~harmful effects~~ **Serious Harm** which may arise [directly ~~or indirectly~~] from Exploitation in the Area, in accordance with ~~the~~ Regulations as well as applicable Standards and taking into consideration 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:

(a) Apply the precautionary approach and an ecosystem-based approach to [the ~~assessment management and prevention of risk of harm [in order to prevent and reduce of risk of harm] [avoidance~~ **reduction** of risk of **Serious H**arm] ~~[the prevention, assessment and management of risk of harm]~~ to the Marine Environment from Exploitation in the Area;

(b) Apply the Best Available Techniques and Best Environmental Practices ~~[and ensure the availability of sufficient information];~~

[...]

[(g) Apply the Mitigation hierarchy to avoid, ~~minimize, mitigate~~ **reduce, remediate and offset, as applicable, impacts on the** ~~and should it become feasible in the future, remediate and restore the~~ Marine Environment ~~from harm caused by activities in the Area.~~]

[...]

~~[(i) Apply the mitigation hierarchy to avoid, minimize, mitigate, and, should it become feasible in the future, remediate and restore the Marine Environment from harm caused by activities in the Area];~~

[...]

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

- Consistent with our previous written submissions, we consider that the term “prevention of risk of harm” is not appropriate given that it is impossible to “prevent” risk. Risks can only be avoided, minimized, or reduced.
- In line with our separate submission on the use of the term Serious Harm across the Draft Regulations, we also reiterate that the standard for harm here should be Serious Harm not just the risk of any and all harmful effects. “Serious Harm” is a key concept for setting out the legal obligations on Contractors with regard to protecting the Marine Environment.
- We know that exploitation activities will have an impact upon the environment at a local scale. 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.
- With respect to sub-paragraph 1(b) we additionally propose to remove the wording that required Contractors to ensure the availability of sufficient information. We consider the wording to be vague and unclear as to how and who will determine that the information is “sufficient”.
- We note that sub-paragraph 1(i) appears to be duplicative of sub-paragraph 1(g). We propose that sub-paragraph 1(i) be deleted.