

**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 58(1.Alt)(a)-(a) sexes and (c)

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 58 [IWG IM]

Review of a Plan of Work

1. A Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the Exploitation Contract [or by decision of the Council based on the recommendations of the Commission] in accordance with the applicable Standards and taking into consideration Guidelines, ~~including~~ where any of the following events or changes of circumstance have occurred:

~~[1. Alt. Activities under a Plan of Work shall be reviewed at intervals not exceeding five years from the date of signature of the Exploitation Contract, or more frequently at the request of the Commission or the Council, including where any of the following events or changes of circumstance have occurred:]~~

~~[(a) A proposed Material Change in the implementation of the Plan of Work;]~~

~~[(a) bis Identification of a new significant environmental risk, or a significant change to existing risk calculations;]~~

~~[(a) bis Alt. Information has come to light that was not available when the Plan of Work was approved, including changes in Best Available Techniques or Best Available Scientific Information, and shows that more appropriate conditions are necessary to deal with the Environmental Effects of the activity;]~~

~~(a) ter An indication that the cumulative effects of Exploitation activities exceed any environmental thresholds established under the applicable Standards [and objectives established under the applicable Regional Environmental Management Plan;]~~

~~(a) quat New significant information relevant to the effective Protection of the Marine Environment;~~

~~(a) quin Adverse impacts on the environment or other activities have arisen that were not anticipated, or are of a scale or intensity that was not anticipated, when the Plan of Work was approved;~~

~~(a) sexies A request by another international body concerning other activities or measure in the Marine Environment pursuant to Regulation 31;~~

[...]

~~(c) Recommendations for improvement in procedures or practices following an inspection report under Regulation 100;~~

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

- We continue to consider that a review of the Plan of Work every five years is sufficient to ensure adequate oversight, protection and compliance. Out-of-cycle reviews should be strictly limited to clear and specific “triggering” events that are detailed in the Draft Regulations. Allowing reviews at the discretion of the Commission or the Council or for unspecified reasons undermines legal certainty and destabilizes the contractor’s ability to effectively plan and execute operations in the Area.
- As such we support Draft Regulation 58(1), except that the only other potential trigger for out-of-cycle reviews of a Plan of Work should be a decision of the Council based on the recommendations of the Commission, where a specified event or change of circumstances occurs. As the Authority’s expert technical body, the Commission has the competence to decide whether an out-of-cycle review is warranted and can make recommendations to the Council accordingly.
- We also propose deleting Draft Regulation 58(1.Alt), as it is not clear why “Activities” under a Plan of Work should be reviewed rather than the Plan of Work itself.
- In relation to the sub-paragraphs (a) through (a) sexies, we consider that these are variously imprecise, unclear, uncertain or irrelevant. Their inclusion could make reviews of Plans of Work unclear and would reduce certainty for contractors. More specifically:
 - In relation to sub-paragraph (a), it is unclear why a proposed Material Change would trigger a review given this would likely be a potential outcome of a review not a cause of a review.
 - In relation to sub-paragraph (a) bis, it is too vaguely drafted to be effective. The term “significant” is undefined in the Draft Regulations and in any event does not impose a high enough threshold to warrant review of a Plan of Work. Furthermore, it is unclear what an “environmental risk” means, or what would qualify as a “significant change to existing risk calculations.” These matters are also already covered by subparagraphs (f), (g) and (g) bis.
 - In relation to sub-paragraph (a) bis alt, we consider that subsequent changes to Best Available Techniques or Best Available Scientific Information should not, without more, trigger review of a Plan of Work. Furthermore, it is not clear how

such information could “show that more appropriate conditions are necessary”, nor what is meant by “more appropriate conditions.” We note that subparagraphs (f), (g) and (g) bis already cover significant changes in Best Available Techniques, Best Available Scientific Information and Best Environmental Practices.

- In relation to sub-paragraph (a) ter, it is unclear what an “indication” means or how the Commission could measure or monitor such an indication. If Draft Regulation 58(1)(a) ter is retained, we suggest defining the types of indications necessary to trigger a review and raising the associated threshold (e.g. a “credible indication”).
 - In relation to sub-paragraph (a) quat, it is unclear and imprecise. It is not clear what qualifies as “significant” here, nor why new information “relevant to the effective protection of the Marine Environment” would require an out-of-cycle review of a Plan of Work
 - In relation to sub-paragraph (a) quin, it is unclear and imprecise. Among other things, “adverse impacts” are too low a threshold to trigger review of a Plan of Work – the threshold should be “serious harm”, at the very least. Furthermore, it is not clear what “other activities” means, nor how the Commission could determine whether adverse impacts were “not anticipated...when the Plan of Work was approved.”
 - In relation to sub-paragraph (a) sexies, it usurps the Authority’s role regarding activities in the Area by allowing other international bodies to change or influence settled Plans of Work by making unspecified “request[s]” concerning unspecified “other activities or measure[s].
- We also consider that sub-paragraph (c) is incredibly broad as it could trigger a review of a Plan of Work from an inspection resulting in any recommendation for improvement. Given that recommendations for improvements are a natural part of most inspections, it is unclear why each and every such recommendation should trigger wholesale review of a Plan of Work.