

**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, Informal Working Group on Institutional Matters, Informal Working Group on Environment, Open-ended Working Group of the Council on the Financial Terms of a Contract

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.

Preamble, Draft Regulation 2, 4, 13, 44, 45, 46, 48ter, 49, 51, 53bis, 53ter, 59, 96quat, 99, Annex IV, Annex VII, Schedule - Use of Terms and Scope

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.

Preamble [*President's Text*]

[...]

The objective of these Regulations is therefore to ~~regulate provide for~~ the Exploitation of the resources of the Area consistent with the Convention, including the duty ~~[to take necessary measures in accordance with the Convention]~~ to ensure effective ~~P~~protection for the Marine Environment from ~~harmful effects~~ **Serious Harm** caused by those activities.

Regulation 2 [*IWG IM*]

Principles, approaches and policies

[...]

2. Recognizing that the rights in the Resources of the Area are vested in humankind as a whole, on whose behalf the Authority shall act, Exploitation in the Area shall be carried out for peaceful purposes and for the benefit of humankind as a whole, taking into particular consideration the interests and needs of developing States, ~~{and}~~ while ensuring the effective ~~P~~protection of the marine environment, ~~[including biological diversity and ecological ecosystem integrity]~~, from ~~harmful~~ **Serious Harm** which may arise from such activities in the Area [consistent with Article 145 of the Convention] ~~including [biological diversity and ecological integrity] [its flora and fauna].~~

Regulation 4 [*IWG IM*]

Rights [and legitimate interests] of coastal States ~~and duty to notify~~

[...]

2. Contractors shall take all measures required and necessary to ensure that their activities are conducted so as not to cause ~~harmful effects~~ Serious Harm to the Marine Environment, including, but not restricted to, pollution, damage to the flora and fauna, ~~interference with the ecological balance of the Marine Environment including ecosystem structure, function and resilience~~ and other hazards to the Marine Environment in areas under the jurisdiction or sovereignty of coastal States, and that ~~such any~~ harmful effects or pollution arising from Incidents or activities in its Contract Area do not spread into areas under the jurisdiction or sovereignty of a coastal State.

[...]

4. Any coastal State which has grounds for believing that any activity under a Plan of Work in the Area by a Contractor or the Enterprise is likely to ~~could~~ cause harmful effects or a threat of harmful effects to its coastline or to the Marine Environment under its jurisdiction or sovereignty, or may result in Exploitation by the Contractor of resources lying within national jurisdiction without the relevant State's consent, shall notify the Secretary-General in writing of the grounds upon which such belief is based. The Secretary-General shall immediately inform the [Commission], and the Contractor and its Sponsoring State or States or the Enterprise, of such notification. The Contractor and its Sponsoring State or States or the Enterprise shall be provided with a reasonable opportunity to examine the evidence, if any provided by the coastal States as the basis for its belief, and submit their observations thereon to the [Secretary-General] in the shortest possible time.

5. Regulation 4(5) shall apply mutatis mutandis to any State with grounds for believing that such harmful effects or threat of harmful effects may be caused in any location under its jurisdiction or sovereignty by an activity under a Plan of Work, ~~and the procedure established in Regulation 4(7) shall also apply.~~

6. If the [Commission] determines, in accordance with the ~~applicable relevant~~ Standards and taking into ~~consideration account~~ Guidelines, that there are clear grounds for believing that, as a result of the Contractor's operations:

(a) Serious Harm or the threat of Serious Harm to the Marine Environment is likely to occur or has occurred, the Secretary-General shall notify the Sponsoring State, and [the Commission] shall recommend that the Council issue an emergency order, which may include an order for the suspension or adjustment of operations, pursuant to Article 165(2)(k) of the Convention and take all necessary measures to prevent Serious Harm to the Marine Environment. Such recommendation shall be taken up by the Council on a priority basis. Upon the receipt of the emergency order, the Contractor shall take necessary measures in accordance with Regulation 28(3); or

(b) Other harmful effects, or threat of harmful effects, to the Marine Environment, in breach of the terms and conditions of the Contractor's Exploitation Contract, provisions of the Convention related to activities in the Area, the Agreement, or the rules, regulations and procedures of the Authority, is-are likely to occur or ~~has-have~~ occurred, the Secretary-General shall notify the Sponsoring State, and the [Commission] shall recommend that the Council issue a compliance notice pursuant to Regulation 103 or

direct an inspection of the Contractor's activities pursuant to Article 165 (2) (m) of the Convention and Part XI of these Regulations.

7. In the case of harmful effects to the Marine Environment within any national jurisdiction resulting from the activities of the Contractor, or in the case of Exploitation of resources lying within national jurisdiction without the relevant State's consent, the Contractor shall be [strictly] liable for any response and clean-up costs, and for any damage that cannot be fully contained, mitigated or repaired, [and the Authority shall require the Contractor to pay compensation, proportionally to the damage caused] [and taking into account any compensation already claimed against the Contractor in national proceedings brought in accordance with Article 235 of the Convention].

Regulation 13 [IWG IM]

Assessment of applications

[...]

5. For the purposes of determining effective P~~ro~~tection of the Marine Environment under Regulation 13 (4)(c)~~(e) and (f)~~, the Commission must take into account:

[...]

(c) An evaluation of ~~harmful effects~~each potential instance of Serious Harm individually, in combination, as well as cumulatively, including effects from other activities in the area under application.

Regulation 13 Alt.

Assessment of applicants and application

9. In considering whether an application provides for effective Protection of the Marine Environment, the Commission shall determine:

[...]

(d) Whether the Plan of Work ensures ~~effective~~ Protection of the Marine Environment, in accordance with all applicable environmental requirements in the Convention, Agreement, and the rules, regulations and procedures of the Authority, taking into account:

[...]

(iii) An evaluation of ~~harmful effects~~each potential instance of Serious Harm individually, in combination, as well as cumulatively, including effects from other activities in the area under application;

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~~ harm]~~][the prevention, assessment and management of risk of harm]~~ to the Marine Environment from Exploitation in the Area;

[...]

[(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 Serious H ~~harm~~ caused by activities in the Area];

[...]

3. No Regulation in this Part shall be interpreted as preventing [sponsoring] States [Parties], the Enterprise and Contractors from taking, individually or jointly, more stringent measures in accordance with international law with respect to the prevention, reduction and where practicable elimination of detrimental effects on the Marine Environment.

Regulation 45 [IWG ENV]

Development of environmental Standards and Guidelines

1. Environmental Standards and Guidelines developed under this Regulation shall have the purpose of ensuring the effective Protection of the Marine Environment from ~~harmful effects~~ Serious Harm, in accordance with Article 145 of the Convention.

Regulation 46 ~~7-alt.~~ [previously 47 Alt.] [IWG ENV]

Environmental Impact Assessment Process

[..]

2. The purpose of an Environmental Impact Assessment under this Regulation shall be to [~~identify and inform the Authority's assessment of an application of a Plan of Work under Regulations 13 to 16, or a Contract's continued adherence to these Regulations and]~~ predict [and evaluate the potential] Environmental Impacts, [~~effects and risks~~] anticipated from the proposed activities [~~on the marine environment and identify necessary measures to Mitigate or manage such effects and~~]

risks], to enable the Authority to assess the potential adverse Environmental Effects [and risks], with the aim to:

(a) Ensure effective Protection for the Marine Environment from ~~harmful effects~~ Serious Harm which may arise from such proposed activities;

[...]

(c) ~~[Avoid Serious]~~ Avoid Serious ~~[Prevent]~~ Harm to the Marine Environment arising out of the proposed activities;

Regulation 48 ter [IWG ENV]

Test Mining

[...]

3. "Test Mining" in the Area requires a prior approval by the ~~[Commission]~~ ~~[Authority]~~ ~~[consistent with the criteria in Regulation 13(1),]~~ and shall be carried out with reasonable regard for other activities in the Marine Environment, in accordance with Articles 87 and 147 of the Convention, and in accordance with the ~~[applicable]~~ Standard and taking into ~~consideration account~~ the ~~[applicable]~~ ~~[relevant]~~ Guidelines and Recommendations ~~[issued by the Commission under the Exploration Regulations]~~, in particular to ensure that the Marine Environment is effectively protected from ~~{harmful effects}/~~ Serious Harm, including the cumulative effects, in accordance with Article 145 of the Convention.

Regulation 49 (previously Regulation 46 bis) [IWG ENV]

Environmental monitoring

[...]

3. Monitoring shall be conducted continuously during all stages of the Exploitation activities until completion of a Closure Plan, to determine whether they are ~~having causing~~ or are likely to ~~have harmful effects~~ cause Serious Harm ~~on to~~ the Marine Environment.

Regulation 51 [IWG ENV]

Compliance with the Environmental Management and Monitoring Plan

A Contractor shall, in accordance with these Regulations, implement and adhere to its Environmental Management and Monitoring Plan and shall: [...]

(d) Implement all applicable Mitigation and management measures to ensure the effective Protection of the Marine Environment from ~~harmful effects~~ Serious Harm, as set out in the [plan and] [applicable] Standards and taking into account [applicable] Guidelines; and

[Regulation 53bis (previously Regulation 49 Alt.) [IWG ENV]

Pollution control

A Contractor shall take ~~[all the]~~ necessary ~~[and appropriate]~~ measures to protect and preserve the Marine Environment, ~~[including the protecting and]~~ coastlines ~~[from harmful effects, in accordance with Article 145 of the Convention,]~~ by preventing, reducing and controlling pollution ~~[and other hazards, including marine litter and underwater noise,]~~ ~~[directly resulting]~~ from its activities in the Area. This is to be done ~~[pursuant to in accordance with]~~ its Environmental Management and Monitoring Plan, ~~[the and all]~~ relevant ~~r~~Rules, regulations and procedures of the Authority, the relevant ~~[applicable]~~ Regional Environmental Management Plan, ~~[and]~~ taking ~~[into]~~ account ~~[of]~~ the applicable Guidelines.

Regulation 53ter (previously Regulation 50) [IWG ENV]

Restriction on Mining Discharges

2. ~~Paragraph 1~~ ~~[Notwithstanding paragraph 1, a Contractor may make such above shall not apply if such]~~ disposal, dumping or discharge into the Marine Environment ~~[where it]~~ is necessary for the safety of the vessel or Installation or the safety of human life, provided that such disposal, dumping or discharge is conducted so as to ~~[prevent minimize the possibility of]~~ minimize the possibility of Serious Harm to ~~[human life and to]~~ the Marine Environment. If Serious Harm to the Marine Environment occurs as a result of disposal, dumping or discharge, the Contractor shall, ~~[upon safe working conditions being restored,]~~ monitor, mitigate and ~~[manage remediate]~~ the impacts of such Serious Harm, and shall report forthwith about such disposal, dumping or discharge to the Authority. ~~[Such disposal, dumping or discharge shall constitute a notifiable event under Regulation 34 and Appendix 1.]~~

Regulation 59 [IWG ENV]

Closure Plan

[...]

1.bis The objectives of a Closure Plan are to ensure that:

[...]

(f) Contractors take appropriate steps to minimise Serious Harm to the environment and to human health during any period of temporary suspension.

Regulation 96 quat [IWG ICE]

Request for inspection in the event of Serious Harm to the Marine Environment

[1. In the event of an Incident that causes Serious Harm to the Marine Environment ~~or and~~ the livelihood of any coastal community, the ~~[adjacent]~~ ~~[potentially affected]~~ coastal ~~State or States~~ which have grounds for believing such Serious Harm is caused by activities in the Area, shall notify ~~the Chief Inspector through the~~ Secretary-General in writing ~~through appropriate channels~~ of the grounds upon which such belief is based and request an inspection.

2. The ~~Chief Inspector~~ ~~Secretary-General~~, upon ~~such the~~ notification ~~by of~~ a Member State, shall ~~examine immediately the grounds for an inspection request and shall~~ promptly initiate inspection ~~where such grounds appear reasonable~~, and invite representatives of ~~the~~ coastal ~~State or States~~

to participate in the inspection, no later than 24 hours after such notification was made by the State or States to facilitate assessment by the Council of whether any ~~pollution or~~ the Serious Harm is attributable to activities in the Area.]

Regulation 99 [IWG ICE]

Inspectors' power to issue instructions

[1. If, as a result of an inspection, an Inspector has reasonable grounds to determine that any occurrence, practice or condition endangers or may endanger the health or safety of any person or poses a threat of ~~Serious~~ Harm to the Marine Environment [or to human remains and objects and sites of an archaeological or historical nature], the Inspector shall give a written instruction, which will have immediate effect, of a temporary nature considered reasonably necessary to remedy the situation, in accordance with any applicable Standards, including:

Annex IV [IWG ENV]

Environmental Impact Statement

[...]

3.3.4. On-site processing

[...]

This section should also cover any disposal of seawater[/fines] and include the spatial layout of the activities over time which will provide a comprehensive map of the disturbance area from which to assess ~~harm~~-impact to the Marine Environment.

Annex VII [IWG ENV]

Environmental Management and Monitoring Plan

[...]

2. An Environmental Management and Monitoring Plan shall contain:

[...]

(h) bis. A description of uncertainties identified from the Environmental Impact Assessment and the plan to reduce or manage these;

(i) An assessment of the significance of the potential Environmental Effects to receptors identified in the Environmental Impact Statement, their key uncertainties, proposed monitoring approach and objectives, and proposed Mitigation measures and management control procedures and responses to minimize, prevent, reduce and control the ~~harm~~-impacts from Environmental Effects, consistent with the Environmental Impact Assessment and the Environmental Impact Statement;

Annex X [President's Text]

Standard clauses for Exploitation Contract

Section 7

Responsibility and liability

7.1 [...] For the avoidance of doubt, strict liability in this context applies the polluter pays principle, and means, it is not necessary to prove that a Contractor intended to commit or was reckless as to committing a wrongful act or omission, it is necessary only to demonstrate unpermitted damage or **Serious Harm** arose as a result of a Contractor's wrongful act for the Contractor to be held liable for that damage or harm.

Schedule

Use of terms and scope

[...]

["**Best Available Techniques**" means the latest stage of development, and state-of-the-art processes, facilities or methods of operation that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the Protection of the Marine Environment from the harmful effects of activities in the Area, taking into account the guidance set out in the applicable Standards and Guidelines.]

[...]

"**Material Change**" means a [substantial]/[significant] change that affects the basis on which an original report, document or plan, including a Plan of Work, was accepted or approved by the Authority, and includes changes such as physical modifications, changes to harmful effects of activities on the Marine Environment, other Environmental Effects or effects on stakeholders, the availability of new knowledge or technology and changes to operational management that are to be considered in light of the applicable Guidelines.

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

- We note that we have submitted specific written submissions concerning several of the above Draft Regulations and, in some instances, have suggested their deletions. Those written submissions are our primary position in relation to each Draft Regulation. However, if those proposals are not accepted then we consider the threshold of harm in each Draft Regulation requires amendment, as set out above and explained below.
- Consistent with our previous submissions, we are concerned with the inconsistent use of the terms, "Serious Harm", "harm" or "harmful effects" across Draft Regulations. As such, we have undertaken a comprehensive review of the use of these references and proposed amendments to ensure that a clear and consistent approach is taken.
- To ensure effective compliance, obligations on Contractors in relation to environmental protection need to be clear. This means that Contractors need to know the specific measures that they need to take as well as the thresholds they need to comply with.
- Further, we know that exploitation activities will have an impact upon the environment at a local scale – as do all human activities. This is unavoidable and the Draft Regulations need to be drafted in recognition of this fact. As such, when considering what impact

Contractors are obliged to entirely prevent, we need to ensure a specific and clear standard is employed – namely the standard of Serious Harm.

- Thus we have proposed amendments to clearly reflect that:
 - Contractors are obliged to not cause Serious Harm to the Marine Environment, and to not cause harmful effects in areas that are subject to national jurisdiction. If this does occur Contractors are subject to specific and detailed reporting and response requirements and also compliance and enforcement provisions; and
 - Contractors are required to do their utmost to minimize and control other instances of harm and harmful effects that may result from their activities in the Area. That is, it is recognized that exploitation will cause some harm – i.e. adverse effects – on the Marine Environment. This is unavoidable given the nature of exploitation and the physical reality of all resource activities – whether on land or on the deep seabed. Contractors cannot be expected or required to not cause any impact or harm, instead they are to take such measures to minimise their impact and harm, as is reasonable in the context of resource activities.