

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 30<sup>TH</sup> SESSION:  
COUNCIL - PARTS 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](mailto:council@isa.org.jm).*

**1. Name(s) of Delegation(s) making the proposal:**

Republic of Nauru

**2. Please indicate the relevant provision to which the textual proposal refers.**

Regulation 35 Alt

**3. 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.**

1. Exploitation activities in the Area shall be conducted in a way that does not negatively affect known human remains and/or Underwater Cultural Heritage.

3. Following the discovery of any such human remains and/or Underwater Cultural Heritage, and in order to avoid their disturbance, no further exploitation shall take place, within a reasonable radius, based on the type of resource and as informed by relevant Standards and taking into consideration relevant Guidelines, until the ~~[Council]~~[Commission] adopts a decision in accordance with paragraph 5. Pending any action by the ~~[Council]~~[Commission], the Secretary-General may suggest to the Contractor further provisional measures to preserve the human remains and/or Underwater Cultural Heritage and their archaeological and natural context taking into consideration ~~[the applicable relevant guidelines]~~[generally accepted underwater archaeological standards]~~[the recommendations of the Committee on Underwater Cultural Heritage]~~.

~~4. Alt. The Secretary-General shall transmit such information in writing, within two (2) days of receiving it:~~

~~(a) to all States parties;~~

~~(c) to all accredited observers.~~

~~(b) to the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and to any other competent international organization; and~~

4 Alt. bis. Any State party may declare its interest in being consulted on how to ensure the effective protection of the human remains and/or Underwater Cultural Heritage. Such a declaration, shall be transmitted to the Secretary-General within ten (10) days of the notification of the discovery by the Secretary-General, ~~[and shall be based on a verifiable link to the human remains or Underwater Cultural Heritage concerned,]~~ with particular regard being paid by the declaring State to its preferential rights as a State of cultural, historical or archaeological origin. ~~[The sponsoring State and the flag State of the mother-vessel from which the exploitation is being carried out shall be considered interested States.]~~

4. Alt. ter. Within fifteen (15) days of the notification of the discovery by the Secretary-General, a consultative meeting of the interested States referred to in the previous paragraph shall be convened to include the contractor, the Secretary-General, the Director General of the UNESCO and accredited observers. ~~[Only States parties shall have the right to vote, but the views of the~~

~~Contractor, the Director General of the UNESCO and accredited observers shall be taken into account.]~~

4. Alt. Quater. Within fifteen (15) days of the convened meeting, the meeting of the interested States shall make to the ~~[Council]~~[Commission] one of the following recommendations:

(a) that the contractor may continue with their exploitation activity;

(b) that further investigation should be necessary to suggest an appropriate recommendation, in which case, the convened consultative meeting shall have an additional fifteen (15) non-extendable days to do so; or

(c) in the case of human remains, that the remains shall be preserved under [relevant][best][generally accepted underwater] archaeological standards or practices, ~~with a proposal made to the Council to create an [Area of Particular Environmental Interest] [Area of Particular Cultural Interest];~~ or

(d) that other protection measures shall be applied to human remains and/or Underwater Cultural Heritage.

~~5. After ascertaining the views of Member States, particularly those with preferential rights under Article 149 of the Convention, within sixty 60 days of the notification of the discovery by the Secretary General, the Council shall make a decision on the termination of exploitation activities within an area surrounding the discovered human remains and/or Underwater Cultural Heritage. The Council may also suggest to the Member States any measure necessary for the preservation and protection of the human remains and/or Underwater Cultural Heritage and their archaeological and natural context taking into consideration [the applicable relevant guidelines][generally accepted underwater archaeological standards][the recommendations of the Committee on Underwater Cultural Heritage].~~

5 Alt. After ascertaining the views of Member States, particularly those with preferential rights under Article 149 of the Convention, and all other interested parties identified in paragraph 4 alt ter, and taking into consideration the relevant Guidelines, the Commission shall, at its next meeting and in any case within 60 days of the notification of the discovery by the Secretary-General, make a determination with respect to the discovery of suspected human remains and/or Underwater Cultural Heritage. The determination of the Commission may include one or more of the following:

(a) confirmation of the nature of the discovered human remains and/or Underwater Cultural Heritage;

(b) a determination of the buffer zones;

(c) a requirement for the Contractor to provide additional information or share additional data with the Authority;

(d) a determination as to the termination of exploitation activities within a clearly defined area surrounding the discovered human remains and/or Underwater Cultural Heritage; or

(e) any other matters that the Commission determines to be appropriate and necessary in the circumstances and in light of the applicable Guidelines.

The Commission may also suggest to the Member States any measure to preserve the human remains and/or Underwater Cultural Heritage and their natural context taking into consideration the applicable Guidelines.

~~[5bis. If the Commission determines that exploitation activities cannot continue, the Contractor shall be compensated, including but not limited to the vicarious areas of equivalent size or value elsewhere or appropriate waiver of fees in accordance with the applicable Standard.]~~

~~6. [IF PARA 4 RATHER THAN PARA 4 ALT AND REST OF SERIES IS CHOSEN] In taking such a decision, the Council will also take into account the views of the United Nations Educational, Scientific and Cultural Organization and of other international organizations mentioned in paragraph 4, as well as the views of any other mentioned stakeholders or non-Member States of the Authority if so decided by the Council.~~

7. The ~~[Council]~~ [Commission] shall forward all information used in making its decision under paragraph 5, including the location of the human remains and/or Underwater Cultural Heritage, to the Secretary-General for inclusion in the Authority's database. Access to such information shall be decided by the Council under Part IX on 'Information-gathering and handling' of this Regulation.

7 bis No decision shall be taken by the Council about the disposal, protection or preservation of a wreck entitled to sovereign immunity and associated human remains without the consent of the flag State.

["Intangible [underwater] cultural heritage" refers to practices, representations, expressions, knowledge, skills, and traditions that are transmitted from generation to generation – as expressed in the instruments, objects, artefacts, flora, fauna and cultural spaces associated therewith – that communities, groups, or, in some cases, individuals recognize as part of their cultural heritage; and relate to the underwater environment and its interaction with human cultures. This may include, but is not limited to, traditional navigation knowledge, oral histories associated with maritime landscapes, spiritual and ritual practices linked to water bodies, and artisanal fishing techniques.]

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

We support draft regulation 35Alt., with suggested modification above.

We are particularly supportive of the wording requiring State Parties that wish to be consulted on the protection of underwater cultural heritage or human remains to provide a declaration of their interest based on "a verifiable link to the human remains or underwater cultural heritage concerned". We consider that such verifiable link is crucial to ensuring there is an effective and efficient consultation process.

We note the Commission is the best organ to coordinate and decide upon appropriate responses to found objects. The Commission has the technical expertise and responsiveness necessary to quickly and efficiently engage in potential finds and determine the most appropriate way forward. It is also more agile and able to meet as needed to determine these matters, rather than wait for the Council's twice-yearly meetings. Given the importance of these finds, decisions on how to deal with them should not be delayed by the Council's meeting schedule.

We also prefer the wording of paragraph 5Alt to the wording of paragraph 5 as it provides for a broad range of options for potential decisions that can be made by the Commission in response to a find of human remains and/or Underwater Cultural Heritage.

We also welcome the inclusion of paragraph 5bis that ensures that appropriate compensation is provided if a Contractor is prevented from undertaking activities in part of its contract area.

Furthermore, we note the ongoing discussions in the Intersessional Working Group on Underwater Cultural Heritage regarding a potential definition for intangible underwater cultural heritage in the draft exploitation regulations.

We consider, as per an earlier written submission that it is important that any such definition is linked to the tangible elements that support the intangible cultural heritage. This would be the most practical approach for the Authority to administer and regulate, and it also aligns with prevailing international standards for environmental impact assessments.

Nauru's proposed definition is in line with guidance given by the World Bank Group in relation to internationally funded development and commercial projects.

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