

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 6(3)

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.

3. Each certificate of sponsorship shall be duly signed on behalf of the State by which it is submitted, and shall contain:

(a) The name [address and contact details] of the applicant;

(b) The name of the sponsoring State;

(c) A statement [and supporting evidence, such as a passport, citizenship certificate, certificate of incorporation or other evidence of registration or nationality,] that the applicant is:

(i) A national of the sponsoring State; or

(ii) Subject to the effective control of the sponsoring State or its nationals;

(d) A statement by the sponsoring State that it sponsors the applicant;

[(d) *bis*. A copy or description of the necessary and appropriate measures taken by the State to secure effective compliance pursuant to article 139 (2) of the Convention, and to ensure legal recourse for compensation in accordance with article 235 (2) of the Convention.]

(e) The date of deposit by the sponsoring State of its instrument of ratification of, or accession or succession to, the Convention, and the date on which it consented to be bound by the Agreement; and

~~[alt. proposal to delete (e), because the date of deposit of the relevant instrument and the date on which the State consented to be bound by the Agreement are known to the Authority and need not be repeated in the certificate of sponsorship.]~~

(f) A declaration that the sponsoring State assumes responsibility in accordance with articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.

~~[alt. proposal to delete (f) as unnecessary, because the responsibilities of a sponsoring State do not depend on such a declaration, but on the legal force of the Convention, as activated by the issue of a certificate of sponsorship.]~~

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

- We consider that it is important that Draft Regulation 6(3)(c) is clear in relation to what “supporting evidence” Contractors are required to supply. As such we propose adding in relevant examples of what would suffice.
- In relation to the proposal to delete sub-paragraphs (e) and (f), we would prefer to retain these requirements as it is consistent with the approach taken in the Exploration Regulations and there is no reason to depart from this approach here.

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Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

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Draft Regulation 7(1)

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.

1. Each application for approval of a Plan of Work shall **be**

(a) **be** in the form prescribed in annex I to these regulations,

(b) ~~shall be~~ addressed to the Secretary-General ~~and~~

(c) ~~shall conform to the requirements of~~ prepared in accordance with these regulations, ~~the applicable Standards and take account of the applicable Guidelines;~~ and

(d) contain sufficient information to demonstrate that the applicant has or will have access to the necessary financial and technical capability and resources to carry out the proposed Plan of Work.

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

- In relation to Draft Regulation 7(1)(c), we emphasise the importance of the Authority prioritising the finalisation of any applicable Standards and Guidelines necessary for the preparation of Plans of Work.
- We also propose that sub-paragraph (d) be amended to recognise that some financing arrangements may be contingent on the Authority’s approval of the Plan of Work. Thus, it would not be appropriate to require the application to demonstrate that Contractor actually has the relevant financial capacity at the time of lodging the application. Instead, consistent with the original text of Draft Regulation 13(1)(e), demonstrating that it will have financial capacity should be sufficient.

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Draft Regulation 7(2)

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.

2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:

(a) Accept as enforceable ~~[during all stages of the process chain]~~ and comply with the applicable obligations created by the provisions of Part XI of the Convention, ~~[the Agreement]~~ the rules, regulations and procedures, ~~[including the Standards]~~ of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;

(b) Accept control by the Authority of activities in the Area ~~[during all stages of the process chain]~~ as authorized by the Convention;

(c) Provide the Authority with a written ~~[substantiated]~~ assurance that its obligations under its contract will be fulfilled in good faith; and

~~[(d) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention]~~

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

- We support Draft Regulation 7(2) but consider that it should be aligned with Regulation 14 of the Exploration Regulations which also covers undertakings given as part of applications for plans of work.
- As such, we propose to delete the insertion of “during all stages of the process chain” in sub-paragraphs 2(a) and (b). This is unnecessary and would only introduce a new and unclear novel term to the regulations.
- We also propose to delete “substantiated” from sub-paragraph 2(c) as it is not in the Exploration Regulations, is unclear as to what it requires, and adds nothing to the requirement to provide an assurance.

- We also support deleting sub-paragraph 2(d) as it is unnecessary and not consistent with the approach taken in the Exploration Regulations.

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3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 7(3), (3)(h) and (h)*bis*.

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.

3. An application shall be prepared in accordance with these regulations [and applicable Standards] [as well as taking into account of the respective Regional Environmental Management Plan] and accompanied by the following:

[...]

(h) An Environmental Management and Monitoring Plan prepared in accordance with regulation 48 and annex VII to these regulations [which documents that management and monitoring ~~are in compliance with~~take into account the applicable Regional Environment Management Plan];

~~[(h)*bis*. Information regarding the environmental management system that the Contractor will implement;]~~

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

- We consider that it is important that the regulations properly refer to various other documents and instruments in light of their legal status, and do not inappropriately elevate non-binding instruments into legal obligations. As such, we propose clarifying this through amendments to Draft Regulation 3 and 3(h).
- We also consider that the content covered by sub-paragraph 3(h)*bis* will already be contained in the relevant Environmental Management and Monitoring Plan referred to in sub-paragraph 3(h). As such, there is no need to also refer to this in a separate sub-paragraph and sub-paragraph 3(h)*bis* should be deleted.

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Draft Regulation 7(4)

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.

4. Where the proposed Plan of Work proposes two or more non-contiguous Mining Areas, the Commission may require separate documents under paragraphs 3 [(b)], (d), (h) and (i) above for each Mining Area, unless the applicant demonstrates [to the satisfaction of the Commission] that a single set of documents is appropriate, taking account of the relevant Guidelines.

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

- We support the proposed clarification in Draft Regulation 7(4) that it is up to the Commission to be satisfied that the use of a single set of documents is appropriate where two or more contiguous Mining Areas are applied for.

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3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 8(1), (3), (3 alt.), (4) and (5)

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.

1. Each application for approval of a Plan of Work shall define the boundaries of the area under application, by a list of ~~geographical~~ **geographical** coordinates in accordance with the ~~World Geodetic System 84 most recent applicable international standard used by the Authority~~ **most recent applicable international standard used by the Authority.**

[...]

~~[3. The area under application shall be located within an exploration Contract Area]~~

[3 alt. The area under application shall be an area previously subject to an exploration contract, or an area in which adequate and satisfactory environmental baseline data is in existence and publicly available.]

~~[4. The areas under application must be covered by a relevant Regional Environmental Management Plan.]~~

~~[5. In the application, the applicant shall provide a statement confirming whether the area under application or any part of it has received attention under any other international organisation or treaty regime.]~~

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

- We consider that the Draft Regulations should avoid referring to specific documents, standards (other than the Standards developed by the Authority) or international agreements, given this runs the risk that they will become out of date or inappropriate if those other instruments change. As such, we propose removing the specific reference to the World Geodetic System 84 from Draft Regulation 8(1) and return to the original wording.
- We prefer paragraph 3 alt as compared to paragraph 3, as paragraph 3 alt provides appropriate and sufficient flexibility in relation to what areas can be applied for while

still ensuring there is satisfactory environmental data regarding areas being applied for.

- We consider that the proposed paragraph 4 is duplicative as areas for exploitation will already need to be covered by a Regional Environmental Management Plan by virtue of Draft Regulation 44bis. There is no need to repeat this requirement here.
- We propose deleting paragraph 5 as it is an ambiguous and unclear requirement. The threshold it sets is potentially very low and would seemingly require Contractors to survey all other international organisations and treaty regimes to determine if the area they are applying “has received attention”. It is also unclear what it means for the area to have “received attention”.
- In any case, the Environmental Impact Statement will ensure the Authority has information regarding consultations with appropriate bodies relevant to the work being done in the area applied for.

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3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 9(1)(a)

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.

1. The Secretary-General shall:

(a) Acknowledge in writing, within ~~[14–30]~~ 7 Days, receipt of every application for approval of a Plan of Work submitted under this Part, specifying the date of receipt;

[...]

(i) Notify the members of the Authority of the receipt of such application and circulate to them ~~[information of a general nature which is not confidential regarding the application the contents of the application save for any Confidential Information contained in the application]~~ information of a general nature which is not confidential regarding the application and information enabling them to access a non-confidential version of the application]; and

(ii) Notify the members of the Commission of receipt of such application.

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

- We oppose the change from 14 to 30 days for the Secretary-General to acknowledge receipt of an application for approval of a Plan of Work in Draft Regulation 9(1)(a). Merely acknowledging receipt should not require 30 days. We consider that 7 days should be sufficient to acknowledge receipt.
- We also consider that it would not be feasible for the Authority to circulate the entirety of each application to every member of the Authority, given how large the applications are likely to be and the amount of information each will contain.
- Instead, we propose the deleted text regarding information of a general (and non-confidential) nature be retained and have proposed the Authority can also provide a link to interested States and Stakeholders to facilitate access to the non-confidential application.

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Draft Regulation 9(2)

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.

2. The Commission shall, subject to regulation 11 (4), consider such an application at its next meeting within 30 days of its receipt of the application, provided that the notifications and information under paragraph 1 (c) above have been circulated at least [30 90] Days prior to the commencement of that meeting of the Commission. [The Commission may defer consideration of such application to its next meeting if it considers the application to be overly complex.]

[Alt. proposal to delete (2) entirely.]

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

- We reiterate our objection made in other written submissions to tethering Commission approval and consideration of matters to its twice-yearly meetings. The Commission is empowered to work intersessionally. It should make use of this power to ensure the efficient processing and consideration of applications and representations by applicants.
- In particular, there is no reason that the Commission should wait until its scheduled meeting to commence its consideration of applications. This would only invite regulatory delay and be unduly burdensome to both the Contractors and the Commission. Instead, we propose the Commission start its consideration within 30 day of its receipt of an application.
- We also propose deleting the proposed addition at the end of Draft Regulation 9(2). It is inconsistent with Article 6 of Annex III of UNCLOS, which requires the Authority to take up for consideration proposed plans of work in the order in which they are received.
- It is also ambiguous and would create uncertainty regarding what it means for an application to be “overly complex”. Indeed, as an expert body, the Commission should not need to defer its consideration of an application due to complexity. It should

commence its consideration as required under the Convention and complete it in accordance with the Convention's requirements.

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3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 10(1 *bis.*), (1 *ter.*), (1 *ter. Alt.*) and (1 *quat.*)

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.

~~[1 *bis.* In case there is a potential applicant who has preference and priority in the same area and same Resource category under Exploration contract, the Secretary-General shall confirm the intention of such a potential applicant to apply]~~

1 *ter.* Should there be more than one application for the same area and same Resource category, the [Secretary-General] shall determine whether the applicant has preference and priority in accordance with article 10 of annex III to the Convention, ~~and in case of any dispute, it shall be submitted to the Commission to make recommendations, upon which the Council shall make the decision.]~~

1 *ter. alt.* Should there be more than one application for the same area and same Resource category, the ~~Secretary-General shall determine~~ **[Commission shall make recommendations to the Council on]** whether the applicant has preference and priority in accordance with Article 10 of Annex III to the Convention.

~~[1 *quat.* The Secretary-General shall notify the members of the Authority of the determination made, if any, as to whether the applicant has preference and priority.]~~

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

- It is not clear what issue Draft Regulation 10(1 *bis.*) is aimed at addressing and as such it should be clarified or deleted.
- We do not consider that the proposed language at the end of Draft Regulation 10(1 *ter.*) is necessary. Determining whether Article 10 of Annex III of UNCLOS applies or not is an objective assessment that the Secretary-General should be able to make a determination. There also should not be the possibility of two contractors both alleging a preference and priority in relation to the same area and resources.

- We also propose deleting Draft Regulation 10(1 *quat*) as it is unnecessary. There is no need for the Secretary-General to notify Authority members of this determination given it will be clear from which application proceeds to consideration and approval.

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Draft Regulation 10(1 *quin.*)

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.

~~[1 *quin.* Where the application concerns a Reserved Area, the Enterprise shall be given an opportunity to decide whether it intends to carry out activities in the area in accordance with article 9 of annex III to the Convention].~~

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

- We consider that Draft Regulation 10(1 *quin.*) is inconsistent with Article 9 of Annex III of UNCLOS and the overall approach to how the Enterprise’s right of first refusal regarding reserved areas is intended to operate. As such it should be deleted.
- Article 9(1) of Annex III of UNCLOS requires the Enterprise to make a decision regarding whether it intends to carry out activities in a reserved area “within a reasonable time” of a qualifying applicant notifying the Authority that “it wishes to submit a Plan of Work” regarding that reserved area for approval. After that point in time has passed, there is no right for the Enterprise to later indicate that it wishes to undertake activities in the relevant reserved area.
- It would not be consistent with this Article to allow the Enterprise an additional opportunity to take over a reserved area when the applicant actually submits an exploitation application. This would come after significant investment by an applicant, including collection of data and preparation of an application.
- This would be inconsistent with Article 9 of Annex III of UNCLOS and the intended way the Enterprise is meant to operate, it would also be unfair for applicants and Contractors and put their investment at risk given the possibility of arbitrary and inequitable outcomes.

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Draft Regulation 10

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.

Some delegations questioned whether the Secretary-General is the proper organ of the ISA to conduct this preliminary review under draft regulation 10, noting it requires a determination whether the information and documents that should accompany the application meet the prescribed characteristics, which may include substantive analysis as to adequacy of the documents’ contents. One delegation identified a risk of confusion or unfairness if the Secretary-General were to determine an application complete, but the LTC upon their evaluation were to raise issues with the same application e.g. around data adequacy. One delegation queried whether the LTC might be better placed to do this review, as a preliminary step in the fully-fledged review of the application (which may already be covered by draft regulation 13(1)(b)).

It was also queried whether the Secretary-General, Council or the LTC holds the legal authority to determine which applicant has preference and priority.

Delegations are invited to note that Article 10 of Annex III to the Convention also provides that an exploration contractor’s preference and priority may be withdrawn if the performance of the operator has not been satisfactory. Questions have been raised in this regard as to: which organ of the ISA would make the determination about past performance, what criteria would be applied, and what recourse the applicant would have to challenge such a determination.

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

- We consider that it is appropriate and efficient for the Secretary-General to do an initial, preliminary review of applications solely focused on ensuring the various components outlined in the guidelines on the preparation of plans of work are met. This would not prejudice the Commission’s review given that the Secretary-General will not assess the substance of the applicant’s claims or data provided.

- The Secretary-General should not be conducting any substantive analysis or considering the merits of the application, particularly against the criteria that the Commission will use to assess applications.
- Further, in our view, only the Council is appropriately empowered to withdraw a preference and priority under Article 10 of Annex III to UNCLOS. In doing so, it must follow paragraph 13 of Section 1 of the Annex to the 1994 Agreement, which specifies what “performance has not been satisfactory” means for the purpose of Article 10. Such a determination would also be subject to potential dispute settlement proceedings by aggrieved applicants.

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3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 11(1)(a), (b), (c), (c) *alt.* and (2)

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.

1. The Secretary-General shall, within seven Days after determining that an application for the approval of a Plan of Work is complete under regulation 10:

(a) Place the Environmental Plans [and any information necessary for their assessment as well as the non-confidential parts of the test mining study] on the Authority’s website for a period of [~~60~~ 90] Days, and [notify and] invite members of the Authority, [~~relevant adjacent coastal States~~], Stakeholders [and the general public] to submit comments in writing, taking account of the relevant Guidelines, ~~and~~

~~(b) Request the Commission to provide its comments on the Environmental Plans [and the non-confidential parts of the test mining study] within the [90-Day] comment period.~~

~~[(c) Establish an independent review team, making use of the roster of competent independent experts, if any, to provide comments on the Environmental Plans within the comment period.]~~

~~(c) alt. [In the case the Commission evaluates that there are aspects of the Environmental Plans that are not covered entirely by its own internal expertise, the Commission shall nominate within 7 Days from the publication of the Environmental Plans on the Authority's website at least three competent independent experts selected on the basis of their significant experience or record of publications in a particular deep-sea environment or technology sector.]~~

...

2. The Secretary-General shall, within seven Days following the closure of the comment period, provide the comments submitted by members of the Authority, [relevant adjacent coastal States], Stakeholders, [the general public,] ~~the Commission,~~ [the

independent review team] and any comments by the Secretary-General to the applicant [for its consideration].

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

- In relation to Draft Regulation 11(1)(a), we note that the phrase “relevant adjacent coastal State” is not defined and is unclear. Absent a clear definition, we propose deleting the reference or using the phrase “States adjacent to the contract area likely to be affected” which is used in Draft Regulation 33(2) in the current President’s Text.
- In relation to Draft Regulation 11(1)(b), we note that the Commission will review only the Environmental Plans, taking into account all comments received, under Regulation 11(3). Thus, it would be duplicative to also require the Commission to provide comments under Draft Regulation 11(1)(b). As such, we propose this sub-paragraph be deleted. We have also proposed a subsequent change to Draft Regulation 11(2) reflecting that there is no need for the Commission to provide comments through this process.
- We consider that Draft Regulation 11(1)(c) is unnecessary and would usurp the role of the Commission itself. It is the Commission that is intended to be the Authority’s body of experts that is able to evaluate Environmental Plans. There should be no need for the Secretary-General to establish a separate and additional review team to undertake this work. As such, sub-paragraph (1)(c) should be deleted.
- The engagement of outside experts something that could be done during the Commission’s review process itself and thus does not belong in Draft Regulation 11(1) which relates to actions the Secretary-General needs to take.
- We would also note that if the Commission was empowered to engage outside expertise, it would be useful to establish a roster of such experts whereby the selection and management of the roaster would be conducted by the Commission.

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Draft Regulation 11(2 *ter.*)

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[2 *ter.*] The applicant shall consider the comments provided pursuant to paragraph (2) and [~~may~~ shall] revise the Environmental Plans [and the test mining study] or provide responses in reply to the relevant and [substantive] comments, [as appropriate], and ~~shall~~ may submit any revised plans or responses [to the Secretary-General][to the Commission] within a period of [30] Days following the close of the comment period, ~~unless otherwise decided by the~~ or such longer period as determined by the Secretary-General after considering following a request by the applicant, submitted before the initial time period expires, before the time period of 30 Days expires for an extension of the period time due to the on the basis that it requires more time required to revise the plans or responses. Notice of the extension of the period shall be posted on the Authority’s website].

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

- Consistent with our submissions on Draft Regulation 12(4) we propose that the application shall be required to respond only to relevant and substantive comments.
- We consider that it may not be necessary for applicants to submit revised plans or responses in response to comments received. As such, we propose amending Draft Regulation 11(1)(2 *ter.*) to not require applicants to revise these documents but merely enabling them to do so if needed.
- We also support empowering the Secretary-General to extend the 30 day time period, and have proposed some amendments to clarify this language.

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Draft Regulation 11(5)

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.

5. The Commission shall prepare a report on the Environmental Plans **[and the test mining study]**. The report shall include details of the Commission’s determination under regulation 13 (4) (e) as well as ~~[a summary of]~~ the comments ~~[or and]~~ responses ~~[made submitted]~~ under regulation 11 (2) **[as well as any further information provided by the Secretary-General under regulation 11(2)]** **[as well as the relevant rationale for the Commission’s determination, with specific explanation as to any comments or responses that are disregarded]**. The report shall also include any amendments or modifications to the Environmental Plans recommended by the Commission under regulation 14 **[and changes subsequently made to application documents by the applicant]**. Such report on the Environmental Plans or revised plans shall be published on the Authority’s website and shall be included as part of the reports and recommendations to the Council pursuant to regulation 15. **[In preparing the report, the Commission [may]~~[shall]~~ seek advice from competent independent experts as necessary. ~~[In such case, the Commission shall clarify the necessity of advice from experts and seek prior approval of the Council.]~~ The experts shall be selected and appointed in accordance with the [relevant Guidelines] [Annex [xxx]]**

Some delegations queried why this requirement for publication and consultation pertains only to the Environmental Plans, and not other components of the Plan of Work, e.g. the Mining Plan, the Finance Plan. One delegation questioned that the Environmental Plans could be understood fully in isolation from other information about the project, found in the other parts of the Plan of Work. Delegates are invited to consider whether this draft regulation 11 may be widened to include all (non-confidential) parts of the application?

...

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

- We have proposed amendments to Draft Regulation 11(5) to clarify that the Commission is not required to seek advice from experts in all cases. Whether or not this is needed should be a determination of the Commission, which can evaluate if this is required and justified in light of the particular circumstances.
- We also note that the Commission already has the power to appoint experts and does not require prior approval from the Council to do so. As such, we have proposed amendments to Draft Regulation 11(5) to reflect this. We do consider, though, that the entire final three sentences of Draft Regulation 11(5) can be deleted – they merely state what is already a power of the Commission. The inclusion of these sentences would only complicate what should be a straightforward part of the Commission’s work.
- In relation to the Co-facilitator’s comment regarding widening Draft Regulation 11 to include all non-confidential parts of applications, in principle we would have no objection to publication and consultation regarding non-confidential parts of applications.
- We do note, however, that this would increase the administrative burden on applicants and the Commission given the large amount of material that would have to be reviewed, redacted and disclosed, and then the resulting increase in comments to review and respond to.
- For some aspects of the application, we would also query the value in mandatory comment requirements or, indeed, whether there will be interest from stakeholders. However, in principle we would have no objection to such a process, as long as confidential information can be designated and protected.
- We would also note the on-going discussions regarding consultations and engagement with stakeholders. That process is also considering Draft Regulation 11 and other provisions relating to consultations, comments, and engagement. It is producing useful potential texts in relation to these matters that may help to cover some of these issues.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 12(2), (2bis.), (3) and (3bis)

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.

2. The Commission shall consider applications expeditiously and shall submit its reports and recommendations to the Council no later than 120 Days from ~~the date of the completion of the requirements for review of the Environmental Plans, in accordance with regulation 11 [(1)(a)](4) and subject to regulation 14 (2)~~ **whichever date occurs later out of:**

(a) the close of the comment period, in accordance with Regulation 11(1)(a), or

(b) the date of submission of a revised plan, in accordance with Regulation 11(2)ter.]

[2bis. If ~~an application is overly complex or~~ incomplete information has been submitted by the applicant, the Commission may delay its reports and recommendations under regulation 12(2) by a further 90 Days.]

3. The Commission shall, in considering a proposed Plan of Work, apply the Rules of the Authority in a uniform and non-discriminatory manner, and ~~ensure its compliance with~~ [shall have regard to] [apply] the principles, policies and objectives relating to activities in the Area as provided for in ~~the Convention,~~ [the Preamble the Convention and Part I of these regulations] [and in particular the manner in which the proposed Plan of Work] ~~contributes to realizing benefits for~~ [is in the interests of] [hu]mankind as a whole [in accordance with decisions of the Council and Assembly] [and ensures the effective protection of the marine environment].

[3bis. ~~The Commission in considering a proposed Plan of Work may seek advice and reports from competent independent experts on any matters considered to be relevant.~~]

...

Several delegations expressed concern about the LTC's competence to determine whether a plan of work realises benefits for humankind as a whole (as required by draft regulation 12(3)). Guidance from Council or Assembly was suggested in this regard.

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

- We support the proposed changes to Draft Regulation 12(2) which sets reasonable time periods for the Commissions consideration and reporting on applications.
- However, consistent with our submission on Draft Regulation 9(2), we propose deleting “overly complex” from Draft Regulation 12(2bis). This term is subjective, vague, and would create uncertainty. It is not clear what it would mean for an application to be “overly complex”, particularly where the contents and requirements regarding applications are set by the Draft Regulations such that the Commission should have a clear expectation and understanding of what they will contain. Indeed, as an expert body, the Commission should not need to defer its consideration of an application due to complexity.
- In Draft Regulation 12(3), we prefer “apply” rather than “ensure its compliance with”, given it is not possible to ensure compliance with things such as “principles”.
- Given that the Preamble to UNCLOS is not legally binding we also propose to revert to the original text in Draft Regulation 12(3).
- In relation to the Co-facilitators’ comments regarding Draft Regulation 12(3), we consider that the Commission – made up of legal and technical experts – should have no issue determining whether a Plan of Work is in the interests of humankind as a whole. The experts on the Commission will have a full understanding of the UNCLOS regulatory regime, including matters such as a how activities in the Area benefit and are of interest to humankind as a whole. As such it is not necessary to require additional guidance from the Council or Assembly to undertake this assessment.
- Consistent with our submissions on Draft Regulation 11(1) and (5), we also propose deleting Draft Regulation 12(3bis) given there should not be a need for the Commission to seek external advice from experts. It is the Commission that is intended to be the Authority’s body of experts that is able to evaluate applications for Plans of Work. Adding additional outside experts would only delay the Commission’s consideration and undermine the role of the Commission. If the Commission requires additional experts this is already facilitated through UNCLOS.

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COUNCIL - PART III**

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1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 12(4)

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.

4. In considering the proposed Plan of Work, the Commission ~~shall~~ **may** take into account:

(a) ~~[Relevant] Any~~ reports from the Secretary-General

~~[(a)bis. Any relevant and substantive comments received following the publication of the Environmental Plans or the Commission's report on the Environmental Plans pursuant to regulation 11];~~

~~[(a)bis. alt. Any relevant and substantive comments made by Stakeholders;]~~

~~[(a)ter. Any advice or reports received from any competent organ of the United Nations or of its specialized agencies or any international organizations with competence in the subject matter;]~~

(b) Any advice or reports sought by the Commission ~~[or the Secretary-General]~~ from independent competent persons in respect of ~~[the application]~~**[the Environmental Plans]** **[environmental matters]** to verify, clarify or substantiate the information provided, methodology used or conclusions drawn by an applicant;

~~[(b) bis. Any concern raised by a relevant adjacent coastal StatesStates adjacent to the contract area likely to be affected with respect to the application;]~~

(c) The previous operating record of responsibility of the applicant ~~[including in relation to mining activities within other jurisdictions]~~, **[as well as the applicant's performance during the exploration stage, including the quality of annual reports and baseline data, and the results of test mining activities];**

~~[(c)bis. The previous operating record of the Sponsoring State(s), and the Sponsoring State(s)' technical resources and enforcement capabilities to monitor and enforce the applicant's compliance with the Rules of the Authority;]~~

[(d) any objectives or measures established in the relevant Regional Environmental Management Plan].

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

- We consider that the Commission should only take into account relevant and substantive comments received and have proposed amendments to Draft Regulation 12(4)(a) *bis* and (a) *bis alt* to reflect this.
- It is also not clear why advice or reports from United Nations organs and specialized agencies has been separated out into a separate item in this list. As such, we propose deleting Draft Regulation 12(4)(a)*ter*.
- In relation to Draft Regulation 12(4)(b) *bis*, we note that the phrase “relevant adjacent coastal State” is not defined and is unclear. Absent a clear definition, we propose deleting the sub-paragraph or using the phrase “States adjacent to the contract area likely to be affected” which is used in Draft Regulation 33(2) in the current President’s Text.
- We object to the proposal in Draft Regulation 12(4)(c) that the Commission should look to applicants’ operating record regarding mining activities in other jurisdictions. This is not appropriate or relevant to activities proposed to be undertaken in the Area and we propose this is deleted.
- It is also not clear why the Commission should be considering the applicant’s “performance” as contemplated by Draft Regulation 12(4)(c). The Commission should be focused on compliance not performance.
- In relation to Draft Regulation 12(4)(c)*bis*, we consider this sub-paragraph is inappropriate as it would involve the Authority passing judgment on a sovereign State. It is not for the Authority to determine the suitability of Sponsoring States. We propose this sub-paragraph be deleted.

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COUNCIL - PART III**

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1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 12*bis*.

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 12 *bis*.~~

~~General obligations of contractors~~

~~In conducting their activities in the Area, Contractors shall at all times:~~

~~(a) comply with the applicable obligations created by the provisions of Part XI of the Convention, the rules, regulations and procedures of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority; and~~

~~(b) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153 (4) of the Convention and article 4 (4) of annex III to the Convention.]~~

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

- We consider that proposed Draft Regulation 12*bis* is misplaced as once activities are being conducted in the Area, the application will have been fully assessed and approved.
- Section 3.3 of the standard contractual terms will already legally oblige Contractors to comply with relevant obligations specified in sub-paragraph (a).
- Regulation 43 also already covers the matters dealt within sub-paragraph (b).

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COUNCIL - PART III**

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IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 13(1)(e), (g) and (h)

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.

1. The Commission shall determine ~~[under consideration of~~ **taking into account the comments made by members of the Authority and Stakeholders, any responses by the applicant and any additional information or comments provided by the Secretary-General]** if the applicant:

[...]

(e) Has ~~[or can demonstrate that it will have]~~ **[or can demonstrate that it will have]** the financial and technical capability **[and capacity]** to carry out the Plan of Work, ~~[meet or exceed environmental performance obligations]~~ and to meet all obligations under an exploitation contract ~~[according to criteria defined by the Council];~~

[...]

~~[(g) Has demonstrated, in relation to the accommodation of other activities in the Marine Environment, due diligence to:]~~

~~[(i) identify in-service and planned submarine cables and pipelines in, or adjacent to, the area under application using the publicly available data and resources as listed in the Guidelines;]~~

~~[(ii) identify sea lanes in, or adjacent to, the area under application that are essential to international navigation;]~~

~~[(iii) identify areas of intense fishing activity in, or adjacent to, the area under application]; and~~

~~[(iv) where other marine users are identified in relation to the area under application, consult with those users to agree measures the Contractor will take~~

~~to give reasonable regard to their activities (such as an easement, or a mining exclusion zone within a reasonable radius);~~

~~[(h) Has demonstrated a satisfactory record of past performance both within the Area and in other jurisdictions.]~~

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

- In relation to Draft Regulation 13(1)(e), consistent with our written submission on Draft Regulation 7(1), this regulation should maintain the original language that recognised that financing may be contingent on approval of a Plan of Work and so at the time of the application may not have the relevant financial capacity but will have the ability to obtain it.
- It is not clear what the proposed reference to “environmental performance obligations” is referring to. This is a new and undefined concept that has not been used previously. We oppose it as unclear and unnecessary.
- It is also not clear why reference to Council determined criteria is required here. Applications should be determined in accordance with UNCLOS, the 1994 Agreement, and these regulations. There is no reason to enable an additional layer of criteria to be imposed by the Council outside of these regulatory processes.
- In relation to Draft Regulation 13(1)(g), we consider this proposal to be too prescriptive and that its substance is already covered by Draft Regulation 13(4)(d). As such it should be deleted.
- In relation to Draft Regulation 13(1)(h), the relevant substance of this provision is already covered by Draft Regulation 13(1)(d) and there is no need to repeat this requirement. Consistent with our written submission Draft Regulation 12(4) we also consider that the Commission should not be looking to applicants’ operating records in other jurisdictions.

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COUNCIL - PART III**

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1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 13(2)(b)(ii), 13(3)(b) and (e)

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.

2. In considering the financial capability of an applicant, the Commission shall determine in accordance with the Guidelines whether:

[...]

(b) The applicant [~~will be~~ is or will be] capable of committing or raising sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any exploitation contract, including:

[...]

(ii) The estimated costs of implementing the Environmental Management and Monitoring Plan and the Closure Plan [~~and to restore and remediate the affected Marine Environment in case of a significant Incident~~];

[...]

~~32.~~ In considering the technical capability of an applicant, the Commission shall determine in accordance with the Guidelines whether the applicant [~~has provided sufficient information to demonstrate it~~] has [~~or will have~~] or will have:

~~[(a) Certification to operate under internationally recognised quality control and management standards;]~~

(b) The technology [~~knowledge and~~] procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan [~~and and~~] the Closure Plan, [~~and the applicable Regional Environmental Management Plan~~] including the technical capability to [~~identify and~~] monitor key environmental parameters [~~and ecosystem~~

components so as to detect any adverse effects] and to modify management and operating procedures [as required to avoid ~~the potential for Serious Harm~~] [when appropriate];

[...]

(e) The capability ~~[and capacity]~~ to utilize and apply Best Available Techniques.

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

- In relation to Draft Regulation 13(2)(b), we oppose the deletion of “or will be”. Consistent with our written submission on Draft Regulation 7(1), this regulation should maintain the original language that recognised that financing may be contingent on approval of a Plan of Work and so at the time of the application may not have the relevant financial resources but will have the ability to obtain them.
- In relation to Draft Regulation 13(2)(b)(ii), it is not clear what obligation is being referred to in the proposed text regarding restoration and remediation in the case of a “significant Incident”. This regulation is not the place to impose an additional restoration/remediation obligation upon Contractors. These matters are already sufficiently covered in other regulations, and this regulation should take a consistent approach to those provisions.
- In relation to Draft Regulation 13(3), we oppose the deletion of “or will have”. Consistent with our written submission above, some Contractors will be engaging the relevant technical capabilities only once their applications are approved. It would not be appropriate or fair to not also consider their ability to get such capability as part of the implementation of their plan of work once approved.
- In relation to Draft Regulation 13(3)(a), we note that the reference to “internationally recognised quality control and management standards” may benefit from further guidance in Standards and Guidelines.
- In relation to Draft Regulation 13(3)(b), the proposed insertion of Regional Environmental Management Plan (REMP) is not appropriate as this sub-paragraph refers to instruments the Contractor has to “comply with”. REMPs are not legally binding upon Contractors and so are not documents that must be complied with as a matter of law.
- We also propose to remove reference to “the potential for” from sub-paragraph 3(b) given the key requirement should be about avoiding Serious Harm not merely the potential for this. There will always be some potential for Serious Harm to occur and it is not possible to entirely remove this. The regulations should reflect this.
- In relation to Draft Regulation 13(3)(e), we note that paragraph 3 relates to what the Commission has to determine “in considering the technical *capability* of an applicant”. For consistency with this, we propose to delete “capacity” from sub-paragraph 3(e).

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART III**

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1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 13(4)

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.

4. The Commission shall determine if the proposed Plan of Work ~~foreseeably contributes to realizing the benefits for [hu]mankind as a whole~~complies is consistent with the fundamental policies and principles contained in regulation 2, and;

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

- We consider that it is not appropriate for the Commission to be required to determine how each proposed Plan of Work individually contributes to the realizing of benefits for humankind as a whole under Draft Regulation 13(4).
- Instead, it is the entire regime established by UNCLOS that must fulfil this goal, for example through benefits to Sponsoring States, royalties to the Authority, transfers of technology, and the other ways specified in UNCLOS.
- As such, we propose to delete this reference and instead require that the Plan of Work “is consistent with the fundamental policies and principles contained in regulation 2” (noting that it is not possible for something to “comply with” a policy or principle given these are not legally binding obligations).

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART III**

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1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 13(4)(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.

(c) Provides for the effective protection of human health and safety of individuals engaged in Exploitation activities [in accordance with the rules, regulations and procedures adopted by the Authority ~~and by any other competent international organizations~~];

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

- We consider that the reference to “any other competent international organizations” in Draft Regulation 13(4)(c) is overly broad and lacks specificity.
- There are a range of potentially relevant international organizations that may produce rules on health and safety. This includes organizations that not all member States may be party to.
- If this reference is to be maintained, it should be limited to relevant or specific international organizations to ensure the requirements for the Plan of Work is clear.

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COUNCIL - PART III**

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1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 13(4)(e)

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.

(e) ~~Provi~~Provides under ~~[Demonstrates that]~~~~[Ensures through]~~ the Environmental Plans, ~~[will secure]~~~~[to secure]~~ for the effective protection of the Marine Environment in accordance with the rules, regulations and procedures adopted by the Authority, ~~[in particular the fundamental principles and the relevant policies under regulation 2]~~ ~~[in particular the fundamental policies and procedures under regulation 2]~~ as well as and taking into account the objectives and measures under the applicable Regional Environmental Management Plan ~~[taking into account the cumulative effects of all relevant activities and climate change].~~

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

- We prefer the formulation of “Provides under the Environmental Plans for...” in Draft Regulation 13(4)(e). This is sufficiently clear that the Commission must determine that the Plan of Work includes provisions for the effective protection of the Marine Environment in its Environmental Plans.
- Alternatively, “Demonstrates that...” may also be appropriate. We do not consider that it would be appropriate or possible for the Commission to attempt to determine if the proposed Plan of Work “Ensures through the Environmental Plans” the effective protection of the Marine Environment.
- We also consider that the relevance of the Regional Environmental Management Plan (REMP) in Draft Regulation 13(4)(e) should be clarified. Consistent with other references to REMPs, these should be “taken into account” as part of the Commission’s considerations but not be presented as legally binding instruments upon Contractors and their activities.
- We also consider that the final proposed insertion into Draft Regulation 13(4)(e) is misplaced and attempts to insert a particular standard for Environmental Plans that (if included) should be done in the substantive regulations regarding such plans.

- We further note that Draft Regulation 13(4)(e) overlaps with Draft Regulation 13(4)(f), which also requires the Commission to evaluate whether the Plan of Work provides for effective protection of the Marine Environment. As such, Draft Regulation 13(4)(e) could be deleted.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART III**

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IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 13(4)(e)*bis* and (f)(ii), (iii) and (iv)

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.

~~[(e)*bis* The effective protection referred to in sub-paragraph (e) implies that the activity will not cause, *inter alia*:~~

~~[...]~~

~~[(f) Provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities, by assessing whether the proposed Plan of Work:~~

~~[...]~~

~~[(ii) will not cause environmental impacts to any area designated by the Authority or other relevant authority as a protected area in terms that prohibit such impacted;]~~

~~(iii) Gives rise to a ~~non-negligible~~serious risk of pollution, damage to flora and fauna, or other ~~harmful effects~~serious harm to ecosystem integrity (i.e. ecosystem structure or function) ~~in a manner that:~~~~

~~(A) impairs the ability of affected populations to replace themselves; or~~

~~(B) degrades the long term natural productivity of habitats or ecosystems;
or~~

~~(C) causes, on more than a temporary basis, significant loss of species richness, habitat or community types;]~~

~~(iv) Gives rise to a ~~non-negligible~~serious risk that it will undermine the protection and conservation of other natural resources of the Area.~~

~~In conducting this assessment, the Commission shall~~ ~~The Commission shall take into account and shall consider).]~~

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

- Draft Regulation 13(4)(e)*bis* is attempting to inappropriately define “effective protection” and thereby impose substantive requirements on activities. We oppose this as such requirements (if agreed) should be in the relevant regulations governing activities not in the provisions regarding how Plans of Work are to be evaluated.
- We also note that the IWG ENV is also considering a definition of “effective protection”. As such it would not be appropriate to attempt to define this term in this regulation.
- We propose deleting the reference to “*other relevant authority*” in Draft Regulation 13(4)(f)(iii) as it is unclear and unnecessary. It is unclear as the only authority that can relevantly designate a protected area for the purposes of the regulations is the Authority itself. Referring to “*other relevant authorities*” suggests other bodies may also be able to do this which would overlap and potentially conflict with the Authority’s role. It would also create ambiguity for applicants in relation to what their proposed Plans of Work need to cover. It is also unnecessary as the Authority will designate all relevant protected areas.
- We consider that Draft Regulation 13(4)(f)(iii) and (iv) should use the standard of “serious risk” or “serious harm” which sets an appropriate and reasonable test for evaluating the effective protection of the marine environment and is more consistent with the rest of the regulation’s approach to Serious Harm.
- We also propose removing the specified additional specifications regarding serious risk and serious harm in Draft Regulation 13(4)(f)(iii)(A), (B) and (C). These are substantive thresholds that are not defined, not used elsewhere and thus should not be inserted in an institutional text. This institutional regulation should not be changing the meaning of established and well-used terms such as “*serious harm*” potentially creating different and conflicting tests between different parts of the regulations.
- We also propose deleting what appears to be a stray final sentence at the end of Draft Regulation 13(4).

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COUNCIL - PART III**

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1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 13(7)

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.

~~[7. In assessing a Plan of Work, the Commission shall determine whether the applicant is under the effective control of the sponsoring State[, according to applicable Guidelines], and whether the sponsoring State has enacted domestic legislation covering activities in the Area that:~~

~~(a) is in force and applicable,~~

~~(b) provides available recourse through the domestic legal system in accordance with Article 235(2) of the Convention, and~~

~~(c) does not contain provisions that appear to exempt liability of the sponsored entity from a cause of action that may result from its conduct of activities in the Area.]~~

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

- We object to the inclusion of Draft Regulation 13(7) as it would require the Commission to inappropriately second guess the declarations of Sponsoring States regarding sponsorship and has no basis in UNCLOS or the 1994 Agreement.
- Each member State has the sovereign right to sponsor Contractors based on the requirements set out in UNCLOS. The Commission has no basis to challenge that sponsorship.
- Draft Regulation 13 relates to the evaluation of applications for Plans of Work to ensure that applicants meet the relevant requirements for undertaking activities in the area and have the capabilities to do so. It should not be used to test Sponsoring States and their regulatory regimes.
- Sponsoring States are subject to specific requirements under UNCLOS. They should not be subjected to additional evaluation through these regulations by the Authority.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 14

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.

1. At any [reasonable] time prior to making its recommendation to the Council and as part of its consideration of an application under regulation 12, the Commission may:

(a) Request the applicant to provide additional information on any aspect of the application [~~within 30 Days of the date when the application is first considered~~] [prior to making a recommendation]; and

(b) Request the applicant to amend its Plan of Work, or propose specific amendments for consideration by the applicant where such amendments are considered necessary to bring the Plan of Work into conformity with the requirements of these regulations.

2. Where the Commission [~~proposes any amendment to the Plan of Work~~] **makes a request** under paragraph 1 [(a) or] (b) above, the Commission shall provide to the applicant a brief justification and rationale for such [~~proposed amendment~~] **a request**. The applicant must respond within [~~the timeframe requested by the Commission, which shall be at least 90 days,~~] **[90 Days following receipt of such [proposal a request] from the Commission]** by agreeing to the [~~proposal request~~], rejecting the ~~proposal request~~, or making an alternative proposal for the Commission’s consideration. The Commission shall then, in the light of the applicant’s response, make its recommendations to the Council.

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

- We support the insertion of “reasonable” into Draft Regulation 14(1) to ensure that the Commission’s requests to applicants are fair and able to be complied with.
- We also support the Commission being able to set a timeframe for responses under Draft Regulation 14(2), however there should be a minimum timeframe set of 90 days. This will ensure applicants have sufficient time to properly consider and prepare responses to requests and are provided procedural fairness.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 15(1)

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.

1. [Taking into account regulations 12(4) and 13, if] the Commission determines that the applicant [~~meets the criteria set out in regulation[s 12 (4) and] [13(4)~~ **meets the relevant requirements**], it [~~shall~~ **may shall**] recommend approval of the Plan of Work to the Council.

[1bis The Commission shall accompany any recommendation made under paragraph (1) approval with:

[(a)][a summary of [the deliberations of the Commission including what inputs have been taken into account and how these have been assessed, as well as] divergences of opinion in the Commission, if any];

[(b) any conditions the Commission considers appropriate to deal with adverse effects of the proposed activities; and]

[(c) a draft Contract.]

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

- Consistent with UNCLOS, Draft Regulation 15(1) should not provide any discretion to the Commission where an applicant meets all of the requirements set out in the regulations.
- Article 6 of Annex III of UNCLOS requires if a proposed plan of work conforms to the relevant requirements, “the Authority shall approve them” (subject to limit exceptions). Further the Commission is limited in what it can consider when evaluating applicants by Article 165(2)(b) of UNCLOS, which requires the Commission to “base its recommendations solely on the grounds stated in Annex III...”.
- The relevant qualification standards in Annex III must “relate to the financial and technical capabilities of the applicant and...[its] performance under any previous

contracts with the Authority” (Article 4(2) of Annex III, UNCLOS), and the applicant making certain undertakings under Article 4(6) of Annex III of UNCLOS.

- We also support the proposed Draft Regulation 15(1bis) which is a useful addition to guide the documentation provided along with the Commission’s recommendations.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 15(2)(a) and (a)*alt.*

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.

2. The Commission shall not recommend approval of a proposed Plan of Work if:

~~[(a) The Commission is unable to determine] that the Plan of Work [either alone or in combination with other activities and impacts] does not ensure effective protection of the marine environment, based on the criteria set out in Regulation 13 (4) (e) and (f)], on the basis of Best Available Scientific Evidence, and applying the precautionary approach.]~~

~~[(a) *alt.* Pursuant to regulation 13(4) (e) and (f), the Plan of Work fails to provide for the effective protection of the marine environment from harmful effects that may arise from the proposed activities, or if the information is sufficiently uncertain or inadequate to determine, pursuant to regulation 13(4) (e) and (f) that the Plan of Work provides for the effective protection of the marine environment from harmful effects that may arise from the proposed activities.]~~

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

- We have proposed amendments to Draft Regulation 15(2)(a) to clarify the role of the Commission in considering proposed Plans of Work and their ability to ensure effective protection of the marine environment. Namely, the Commission should be required to determine the proposed Plan of Work does not ensure effective protection of the marine environment before it decides to not recommend it for approval.
- We note that Draft Regulation 44(a) already requires the Authority to apply the precautionary approach in relevant circumstances. There is no need to repeat this requirement in Draft Regulation 15(2)(a) particularly given it is unclear exactly what this would mean in this context.
- We also oppose Draft Regulation 15(2)(a)*alt.* The proposed alternative paragraph does not use the appropriate standard in relation to effective protection of the marine

environment – namely, Serious Harm. It also establishes a vague and uncertain test regarding the Commission’s evaluation of proposed Plans of Work.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 15(2)(b)

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.

2. The Commission shall not recommend approval of a proposed Plan of Work if:

[...]

(b) part or all of the area covered by the proposed Plan of Work is included in:

~~[(i) A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant.]~~ [(i) [A Plan of Work for Exploration approved by the Council for the same Resource category for a different qualified applicant.](#)]

(ii) A Plan of Work approved by the Council for Exploration or Exploitation of other Resources if the proposed Plan of Work would be likely to cause undue interference with activities under such approved Plan of Work for other Resources;

(iii) An area disapproved for Exploitation by the Council pursuant to article 162 (2) (x) of the Convention; or

~~[(iv) an Area of Particular Environmental Interest or any other site disapproved for exploitation by the Council, or that sets a spatial or temporal protective measure],~~ as determined in the applicable Regional Environmental Management Plan;

~~[(v) any other area designated for preservation for reasons of special biological, scientific, archaeological, historic, cultural, aesthetic or wilderness significance;]~~

(vi) A Reserved Area or an area designated by the Council to be a Reserved Area, except in the case of eligible applications under these regulations made in respect of a Reserved Area.

~~[(vii) An area that has not been subject to prior exploration activities].~~

[(viii) An area not covered by a Regional Environmental Management Plan].

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

- We oppose the deletion of Draft Regulation 15(2)(b)(i) and propose this be reinserted.
- Sub-paragraph 2(b)(i) is consistent with Article 6(3)(a) of Annex III of UNCLOS, which allows proposed Plans of Work to not be approved where “part or all of the area covered...is included in an approved plan of work...”. This provision is also important to ensure that rights provided to Contractors are not in conflict and that the Contractor’s rights to exclusivity under Article 16 of Annex III of UNCLOS is upheld.
- In relation to Draft Regulation 15(2)(b)(iv), it is unclear what the reference to “spatial or temporal protective measures” is referring to. As such we propose this be deleted or clarified by its proponents.
- In relation to Draft Regulation 15(2)(b)(v), it is not clear what designation is being referred to or what entity’s designation would qualify under this sub-paragraph. We consider this to be overly broad, vague and unclear. As such, we propose it be deleted.
- We oppose the proposed Draft Regulation 15(2)(b)(vii) as it has no basis in UNCLOS or the 1994 Agreement and is inconsistent with Draft Regulation 8(3 alt). Areas may be exploited without having been previously explicitly explored, as long as sufficient data and environmental information is able to be provided to enable the Authority to assess the proposed Plan of Work. There is no need to arbitrarily require that an area have been explored on top of the other requirements set by these regulations.
- Alternatively, if sub-paragraph (vii) is to be maintained it should be clarified as follows: “An area that has not been subject to an exploration contract”. This would clarify and simplify the Authority’s assessment of this requirement – namely, by just requiring it to verify whether the area was previously covered by an exploration contract.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 15(2)(c), (d), and (e), and (2bis)

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.

2. The Commission shall not recommend approval of a proposed Plan of Work if:

[...]

~~[(c) Such approval would undermine or contradict the regional goals, objectives or measures set out in the applicable Regional Environmental Management Plan.]~~

~~[(d) Such approval would pose a reasonable risk of damage to an in-service or planned submarine cable or pipeline, or cause undue interference with the freedom to lay submarine cables and pipelines when considered in conjunction with other approved Plans of Work [or is otherwise unable to give reasonable regard to other marine users in the area under application].]~~

~~[(e) There is inadequate or substandard environmental baseline information for the area covered by the proposed Plan of Work, or any part of that area.]~~

~~2bis: The Commission shall not recommend approval of a proposed Plan of Work if the applicant, its controlling shareholder or shareholders or its predecessor in law previously violated the general obligations of contractors in a non-negligible way.~~

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

- We propose to delete Draft Regulation 15(2)(c) as it is not a relevant consideration for the Commission and would inappropriately elevate the status of Regional Environmental Management Plans to legally binding instruments, which they are not.
- We propose to delete Draft Regulation 15(2)(d) as its contents is already covered by Draft Regulation 13(4)(d), which is consistent with the obligation in Article 147 of UNCLOS that activities “shall be carried out with reasonable regard for other activities in the marine environment. Any obligation regarding other activities in the Area, such as those related to submarine cables or pipelines, must accord with UNCLOS, be

subject to assistance from relevant member States (e.g. to identify such cables or proposed activities) and be on a best endeavors basis only.

- We propose to delete Draft Regulation 15(2)(e) as its contents is already covered by Draft Regulation 13(4)(f)(i). There is no need to duplicate the requirement around baseline data here.
- We propose to delete Draft Regulation 15(2bis) as it has no basis in UNCLOS or the 1994 Agreement, is not relevant to the Commission's considerations of proposed Plans of Work, is vague and far too broad in relation to what it captures.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 15(3)(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.

3. The Commission shall not recommend the approval of a proposed Plan of Work if it determines that:

(a) Such approval would permit a State party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work [taking into account relevant Guidelines]; or

...

~~[(c) Such approval would permit a State party or entities sponsored by it to monopolize or significantly control the production of any single mineral or metal produced globally; or].~~

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

- We propose deleting Draft Regulation 15(3)(c) as it is unnecessary and creates a new and undefined concept of “*significantly control*” that is not used in the regulations.
- Sub-paragraph (c) is unnecessary as sub-paragraph (a) already prevents recommendations to approve proposed Plans of Work where they would permit monopolization of activities in the Area which is the key relevant concern for the Authority. As such there is no need to add additional requirements around “*significant control*” and monopolization of mineral/metal production globally.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 15(4)

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.

4. If the Commission determines that the applicant does not meet the [criteria requirements] set out in regulation[s ~~12 (4) and~~ 13] [(4)], the Commission shall so inform the applicant in writing by providing the reasons why any [criterion has requirements have] not been met by the applicant, and provide the applicant with a further opportunity to make representations within 90 Days of the date of notification to the applicant. **During this period the Commission shall not make a recommendation to the Council on the application.**

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

- We do not consider it appropriate for Draft Regulation 15(4) to require applicants to “meet” the matters set out in Draft Regulation 12(4) and have proposed amendments to remove this.
- Draft Regulation 12(4) contains a list of things that the Commission “may take into account” when considering proposed Plans of Work”. It does not set out a list of binding requirements or criteria that applicants have to meet.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 15(5)

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.

5. ~~At its next available meeting, t~~The Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, ~~which it shall do provided that the representations have been circulated at least within~~ 30 Days ~~in advance of that meeting of its receipt of such representations.~~ [The Commission shall then consider the application afresh, in the light of the representations, in accordance with this Section 3.]

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

- We reiterate our objection made in other written submissions to tethering Commission approval and consideration of matters to its twice-yearly meetings. The Commission is empowered to work intersessionally. It should make use of this power to ensure the efficient processing and consideration of applications and representations by applicants.
- Linking the Commission’s consideration of these representations to its meeting schedule also risks it not complying with the overarching timeframe for its consideration and reporting on applications for Plans of Work under Draft Regulation 12(2).
- Draft Regulation 12(2) requires the Commission to submit its reports and recommendations on applications to the Council no later than 120 days after the later of the close of the relevant comment period on the Environmental Plans or the Commission’s receipt of revised plans. Given the gaps between the Commission’s regular meetings it is not clear how it could meet this deadline if it did not make use of intersessional processes to consider these matters.
- As such, we propose that the Commission should consider representations by applicants under Draft Regulation 15 within 30 days of receipt to ensure there is no unnecessary delay in these processes.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 15(6)

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.

[6. The Commission may refuse an application and return it to the applicant. The Commission must provide reasons for refusing an application, including a summary of the deliberations of the Commission specifying what considerations have been taken into account and how these have been assessed, as well as divergences of opinion within the Commission, if any.]

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

- We have proposed additional language in Draft Regulation 15(6) based on Draft Regulation 15(1)(a) to increase the transparency of the Commission’s decision-making.
- Under Draft Regulation 15(1)(a), where the Commission recommends approval of a Plan of Work it is required to also provide a summary of its deliberations. Similarly, we propose that where the Commission refuses an application it should also provide such a summary.
- This would increase the transparency of Commission decision-making and assist States and Stakeholders with understanding its determination regarding applications.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 16

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.

Section 4

Consideration of an application by the Council

Regulation 16

Consideration and approval of Plans of Work

~~16.~~The Council shall consider the reports and recommendations of the Commission ~~[and any other relevant subsidiary body established in accordance with the Convention and the Agreement,]~~ relating to approval of Plans of Work in accordance with paragraph 11 ~~[and paragraph 12]~~ of section 3 of the annex to the Agreement, ~~[after due consideration, [and within 60 days unless the Council decides to provide for a longer period] the Council shall approve or disapprove the Plan of Work]. [If the Council does not take a decision on a recommendation for approval of a Plan of Work within 60 days or such other time period as has been established by the Council, the Plan of Work shall be deemed to have been approved by the Council at the end of that period.]~~

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

- We have proposed deleting the references to reports and recommendations of “any other relevant subsidiary body” from Draft Regulation 16 as paragraph 11 of Section 3 of the Annex to the 1994 Agreement requires the Council to “approve a recommendation by the” Commission.
- There are no provisions contemplating other subsidiary bodies being able to make reports or recommendations on applications for a Plan of Work and so this language has no legal basis for inclusion in the regulations.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 89(2)

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 89

Confidentiality of information

[...]

2. “Confidential information” means: [...]

[\(...\) data and information in a category designated by the \[Standards / Guidelines\] as Confidential Information](#).

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

- We note that to finalise Draft Regulation 89 we need to review a consolidated text that incorporates the work being done on this provision and confidentiality across all of the Informal Working Groups.
- We also support the proposal set out in the Facilitator’s comment for the adoption of Guidelines or Standards in relation to what constitutes confidential information and have proposed language in Draft Regulation 89(2) to establish this.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 89(3)(f), (i) and (j)

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.

3. “Confidential Information” does not mean or include data and information that:

[...]

(f) Relate to the protection and preservation of the Marine Environment, ~~[provided that unless]~~ ~~[the Secretary-General]~~ ~~may [agree that designate’s]~~ such information is ~~regarded~~ as Confidential Information for a reasonable period[, subject to such conditions as may be appropriate,] [which shall under no circumstances exceed a period of [2] [4] years] where [the Commission agrees] there are bona fide academic reasons for delaying its release [on the terms proposed by the Secretary-General, and the decision including the reasons are reported to Council];

[...]

(i) Relates to an area no longer covered by an exploitation contract; provided that following the expiration of a period of 10 years after ~~it was passed to the Secretary-General~~ the relevant contract expires or is terminated, Confidential Information shall no longer be deemed to be such unless otherwise agreed between the Contractor and [the Secretary-General] [in accordance with the relevant Guidelines,] and save for any data and information relating to personnel matters under paragraph 2 (b) above [; or

(j) Are in a category designated by the Council ~~[Standards / Guidelines]~~ as not being Confidential Information].

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

- We have proposed minor grammatical amendments to Draft Regulation 89(3)(f) for clarity only.

- In relation to Draft Regulation 89(3)(i), we propose that the time period for expiration of confidentiality should commence when the relevant contract expires or is terminated rather than when the data or information is provided to the Secretary-General.
- Information and data provided is likely to remain confidential and commercially sensitive for the duration of the contract, it should not be released prior to completion of the project.
- In relation to Draft Regulation 89(3)(i), we support the proposal set out in the Facilitator's comment for the adoption of Guidelines or Standards in relation to what constitutes confidential information and have proposed language to establish this.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 89(5)

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.

5. In connection with paragraph 2 (d) above, a Contractor shall, upon transferring data and information to the Authority, designate by notice in writing to the Secretary-General the Information or any part of it as Confidential Information. If the Secretary-General objects to such designation [~~within a period of 30 Days~~ within a period of 30 Days], the parties shall consult upon the nature of the data and information and whether it constitutes Confidential Information under this regulation. During the consultations, the Secretary-General shall take into account any relevant policy guidance from the Council. Any dispute arising as to the nature of the data and information shall be dealt with [~~through the administrative procedure described in~~ through the administrative procedure described in *[insert here cross-reference to relevant provisions or Annex of the Regulations setting out administrative decision review procedures]*]. ~~in accordance with Part XII of these regulations.~~

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

- We propose that Draft Regulation 89(5) should retain the time period within which the Secretary-General can object to a designation of confidentiality. It would not be fair to Contractors to allow for designations of confidentiality to be objected to at any time no matter how long after the information has been provided to the Secretary-General. This would introduce significant uncertainty into the confidentiality regime established under the regulations.
- We also note that that other Informal Working Groups are also consider internal administrative review mechanisms. It will be important to ensure that the ultimate mechanism works consistently across all the areas that it is referred to.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 90(5)

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.

5. Taking into account the responsibility and liability of the Authority pursuant to article 22 of annex III to the Convention, the Authority may take such action as may be appropriate against any person who, by reason of his or her duties for the Authority, has access to any Confidential Information and who [~~is in~~ breaches any] of the obligations relating to confidentiality contained [in] the Rules of the Authority. [In the case of a breach of the obligations relating to confidentiality, the Authority shall notify the relevant Contractor and Sponsoring State.]

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

- We strongly support the proposed requirement in Draft Regulation 90(5) for Contractors and Sponsoring States to be notified of breaches of confidentiality obligations. This will be particularly important to enable Contractors to mitigate any damage associated with such breaches.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 91

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 91

Information to be submitted upon expiration of an exploitation contract

1. [Upon expiration of an exploitation contract,] [∓][t]he Contractor shall transfer to the Authority, [to the extent feasible within 90 Days,] all data and information that are required for the effective exercise of the powers and functions of the Authority in respect of the Contract Area, in accordance with the provisions of this regulation and [taking into account] the Guidelines.

2. Upon termination of an exploitation contract, the Contractor and the Secretary-General shall consult together and, taking into account the Guidelines, the Secretary-General shall specify the data and information to be submitted to the Authority [within 90 Days].

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

- We consider that some flexibility may be required in relation to the time period in Draft Regulation 91(1) to ensure Contractors can fully comply with this obligation and provide all the relevant data and information.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 92(1)(e)*bis*.

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.

1. The Secretary-General shall establish, maintain and publish a Seabed Mining Register in accordance with the Standards and **[taking account of the]** Guidelines. Such register shall contain the following information (except to the extent such information is, or parts of such information are, confidential):

[...]

[(e) bis. ~~Non-confidential parts of~~ annual reports, including the amount of Mineral Resources mined, and details of any Incidents, Notifiable Events, Compliance Notices or other compliance-related interventions taken by the Authority;]

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

- We consider that the language regarding non-confidentiality in Draft Regulation 92(1)(e)*bis* would be better suited at the start of the paragraph to ensure that the register does not contain any confidential information regardless of where it comes from.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART III**

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1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 106

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 106

Settlement of disputes

1. Disputes concerning the interpretation or application of these regulations and an exploitation contract shall be settled in accordance with section 5 of Part XI or Part XV of the Convention ~~[and the rules of procedure adopted by the International Tribunal for the Law of the Sea for the conduct of expedited hearings concerning the Rules of the Authority].~~

2. ~~[In accordance with article 21 (2) of annex III to the Convention, A-a]~~ny final decision rendered by a court or tribunal having jurisdiction under the [Convention] [Rules of the Authority] relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of any State party to the Convention ~~–affected thereby.~~

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

- We consider that Draft Regulation 106(1) should also refer to Part XV of UNCLOS, which governs State-to-State disputes under all of UNCLOS including in relation to Part XI.
- We also do not consider it necessary to explicitly refer to the ITLOS Rules of Procedure in Draft Regulation 106(1). Where expedited hearings are necessary these can be sought in accordance with the relevant Rules. There may also be disputes regarding the regulations or an exploitation contract that cannot make use of ITLOS’s Rules of Procedure (e.g. if a Contractor opts for binding commercial arbitration under Article 188(2)(a)).

- In relation to Draft Regulation 106(2), we oppose the reference to “Rules of the Authority” as jurisdiction is established by UNCLOS not the Rules of the Authority. These regulations should not imply that they could modify the jurisdiction established by UNCLOS.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

IWG – Institutional matters

2. Name(s) of Delegation(s) making the proposal:

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Limited

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Regulation 107(2) and (3)

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.

2. If, in the light of improved knowledge[, implementation experience, identification of regulatory gaps,] or technology, it becomes apparent that these regulations are not adequate, any State party, the Commission, ~~or~~ any Contractor ~~[or Stakeholder]~~ through its sponsoring State, [or any relevant Stakeholder through its relevant State Party] may at any time request the Council to consider, at its next ordinary session, revisions to these regulations **[and the matter shall be included in the provisional agenda of the Council for that session].**

3. The Council shall establish a process that gives ~~[relevant]~~ relevant Stakeholders adequate time and opportunity to comment on proposed revisions to these regulations, save for the making of an amendment to these regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

[...]

[5. Any amendments to these Regulations adopted by the Council and the Assembly, shall not be applied retroactively to the detriment of the Contractors that have already signed an exploitation contract with the Authority.]

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

- We propose that “relevant” should be added to Draft Regulation 107(2) to make the scope of Stakeholders that the paragraph applies to clear. We have also proposed moving the reference to “relevant Stakeholders” given that Stakeholders do not have sponsoring States. We also propose that relevant Stakeholders be required to engage with the Council via their relevant State Party, similar to how Contractors are required to put their requests through their Sponsoring States. This will ensure the Council is not inappropriately burdened by requests from an overly broad range of Stakeholders,

some of which may be inappropriate or frivolous. It also ensures that States Parties retain their important role in terms of governing the agenda and work of the Council.

- We consider that “relevant” should be maintained in Draft Regulation 107(3) to ensure that the Council can limit its engagement to stakeholders that are relevant to its work during the review.
- We also strongly support proposed Draft Regulation 107(5) which is consistent with the approach taken in the Exploration Regulations and the standard clauses of Exploration Contracts.
- Draft Regulation 107(5) is also in line with the general approach taken under Article 17(2)(b)(iii) of Annex III of UNCLOS which explicitly links the setting of the duration of contracts with providing the Authority the ability to “amend the terms and conditions of the plan of work...in accordance with rules, regulations and procedures *which it has adopted subsequent to approving the plan of work.*” This clearly implies that regulatory changes that post-date a contract shouldn’t apply to the Contractor absent a revision to the contract agreed with the Contractor.