

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 44(1)(a)(i)

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. ...To this end:

(a) In adopting and keeping under periodic review rules, regulations and procedures, as well as the Standards and Guidelines in accordance with the Convention and the Agreement, the Authority shall:

(i) Apply the precautionary approach and the ecosystem-based ~~management~~ approach to the assessment, management and ~~prevention~~ avoidance of risk of harm to the Marine Environment from Exploitation in the Area,

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

- Consistent with our previous written submission on Draft Regulation 44(1)(a)(i), we consider that the term “prevention of risk of harm” is not appropriate given that it is impracticable if not impossible to “prevent” risk.
- Risk is merely the possibility of something happening that will have a negative effect. All activities, including exploitation, necessarily involve some level of risk.
- No contractor can guarantee complete protection from harm, much less complete prevention of risk. Risks can only be avoided or reduced.
- To align with the mitigation of risk referenced elsewhere in the Draft Regulations, we consider risk must be assessed and be managed within levels consistent with the ALARP principle (“as low as reasonably practicable”), as set out in Regulation 47(3)(c).

- We support consistency in terminology relating to risk and other approaches to ensure that contractors have a clear understanding of their obligations.
- We note the Commission's Draft guidelines on the tools and techniques for hazard identification and risk assessments (document ISBA/27/C/8) addresses matters relevant to the risk assessment and management process, including the ALARP approach.
- As such, we propose placing the term "prevention" with "avoidance."

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

Draft Reg. 44(1)(a)(iv.ter)

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~~[(iv.ter) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation, including through the participation and consultation of Potentially Most Affected Coastal States and other Stakeholders, as well as the prompt public release of environmental data and information at regular intervals and in an accessible format through the Authority's website.]~~

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

- We prefer to retain the original sub-paragraph (iv) in Draft Regulation 44(1)(a) and propose removing (iv.ter).
- The phrase “Potentially Most Affected Coastal States” lacks clarity. It is neither defined nor used elsewhere in the Regulations.
- This lack of clarity introduces ambiguity into Draft Regulation 44, as there is significant uncertainty regarding which States would fall within this term, as well as the impact of their participation and consultation (for example, how their input will be weighed against that of “other States and Stakeholders”).
- We support the original sub-paragraph (iv), which refers to “including through Stakeholder participation [in accordance with the relevant Standard].” This formulation is sufficiently flexible to ensure all necessary and appropriate stakeholder consultation and engagement is undertaken.

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

Draft Reg. 44(1)(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.

~~e) In taking [all] necessary measures to prevent, reduce and control pollution and other hazards to the Marine Environment [and its ecosystem structure, function and resilience], including the [adjacent] coastlines, [and of interference with the ecological balance of the Marine Environment which includes] ecosystem [integrity] [structure, function and resilience] arising from [its] Exploitation in the Area, the Enterprise and Contractors shall [implement, mutatis mutandis, the measures set out under paragraph (a)(i) to (iii) above and] demonstrate accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation, including through Stakeholder participation and the [timely] [prompt] public release of environmental data and information on their respective activities at regular intervals and in an accessible format. In so doing, the Enterprise and Contractors shall apply a priority order to avoid, minimize, mitigate, [and] remediate, [and restore] [shall Mitigate] harm to the Marine environment [and as a last resort, offset] and adapt the necessary measures [according] to newly obtained information and data.~~

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

- We propose deleting Draft Regulation 44(1)(c) as it is duplicative.
- Draft Regulation 44(1)(a)(iv) already requires the Authority to “ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation...”.
- Since the Authority is already subject to sub-paragraph (a)(iv), there is no need to reiterate this obligation in sub-paragraph (c).

- If sub-paragraph (c) is adopted, we propose retaining the reference to “ecosystem structure, function and resilience”. The proposed alternative term – “ecosystem integrity” – is ambiguous. It is neither defined nor used elsewhere in the Draft Regulations. It does not provide clear guidance regarding the Marine Environment because it does not refer to specific aspects of the relevant ecosystem.
- “Ecosystem structure, function and resilience” provides clear and adequate guidance by identifying the specific aspects of the ecosystem that must be protected from pollution and other hazards.
- Furthermore, Draft Regulation 44(1)(c) was changed to insert the term “ecosystem, structure, function and resilience” earlier in the sentence. Adding a new, different and undefined term – “integrity” – later in the sentence suggests it is referring to a different concept, which is not the case.

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

Draft Reg. 44(1)(i) and 44(2)(a)

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Explanation / comment

One participant suggested using the term “*precautionary principle*” instead of “*precautionary approach*” in paragraph 2 (a). However, I propose to keep the term “*precautionary principle*” as this is the term mostly used, e.g., see the 2011-Advisory Opinion from ITLOS on “Responsibilities and Obligations of States Sponsoring persons and entities with respect to activities in the Area”. See, in particular, paras 125-135 in the section entitled “*precautionary principle*” in the Opinion.

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

- We oppose the use of the term “precautionary principle” in place of “precautionary approach”. “Precautionary approach” is the common term used throughout the Draft Regulations and the Exploration Regulations, not “precautionary principle.”
- The use of the term “precautionary approach” is also consistent with the 2011 ITLOS Advisory Opinion. Paragraphs 125-135 of which refer to the term “precautionary approach” not principle.
- As such, we propose retaining the term “precautionary approach” in the text of Draft Regulation 44(1)(i) and 44(2)(a).

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Draft Reg. 44(2)(a)-(g)

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~~2. In adopting laws and regulations, in accordance with the Convention, to prevent, reduce and control pollution of the Marine environment from Exploitation undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be, States shall implement, mutatis mutandis, the measures set out under paragraph 1(a)(i) to (iv) above.~~

~~2 bis. The parties [mentioned in paragraph 1] shall:~~

~~(a) Apply the precautionary approach, and the ecosystem based management approach to the assessment and management of risk of harm to the Marine Environment from Exploitation in the Area;~~

~~(b) Apply the Best Available Techniques and Best Environmental Practices;~~

~~(c) Integrate Best Available Scientific [information Evidence] in decision making, including all risk assessments and management undertaken in connection with environmental assessments, [acknowledging knowledge gaps and uncertainties] and the management and response measures taken under or in accordance with Best Environmental Practices; and~~

~~(d) Ensure accountability and transparency in the assessment, evaluation and management of Environmental Effects and risks from Exploitation in the Area, including through Stakeholder participation and the timely public release of relevant environmental data and information at regular intervals and in an accessible format through the Authority’s website.~~

~~(e) Take into account the approach that the polluter should, in principle, bear the cost of pollution, endeavour to promote practices whereby those engaged in~~

~~exploitation activities bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest.~~
~~(f) In implementing the regulations, act so as not to transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another as stated in article 195 of the Convention. [This especially related to the previous reference to avoiding toxic, persistent and bio-accumulative substances].~~
~~[(g) Ensure that Exploitation under an exploitation contract is carried out with reasonable regard for climate mitigation and ecosystems in the area, such as carbon burial and sequestration and nutrients recycling].~~

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

- We consider that Draft Regulation 44(2) inappropriately encroaches upon the rights and responsibilities of States Parties regarding their own domestic laws and regulations, and so should be deleted.
- The Draft Regulations should not attempt to impose new obligations upon States Parties in relation to their sovereign right to legislate and decide for them how best to comply with their UNCLOS obligations.
- It is not appropriate for the Draft Regulations to create a prescriptive regime regarding how States Parties are to comply with their obligations. Instead, States Parties should be free to choose the method and approach that is most suited to their specific circumstances, which will differ depending on the particular situation of various States Parties.

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

Draft Reg. 45/45 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.

Explanation / comment

- I have received a draft from an intersessional working group on regulation 45 for re-structuring this provision. I thank the group for their hard work. I propose to follow the submitted proposal going forward as the new regulation 45.
- I note however that several participants have submitted proposals for amending regulation 45. To publicise these suggestions, I have made a “*Reg. 45 Alt.*” where these are incorporated. My comments below refer to these. However, I underline that I support the work of the intersessional working group and propose to use their suggested wording of regulation 45 going forward. I invite for comments on this.

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

- We support the Facilitator’s suggestions to continue discussions based on Draft Regulation 45 not Draft Regulation 45Alt.
- Draft Regulation 45Alt is largely duplicative of Draft Regulations 94 and 95 and is unnecessary.
- Notwithstanding our other written submissions on Draft Regulation 45Alt, our primary position is it should be deleted, and the text should be settled on the basis of Draft Regulation 45.

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

Draft Reg. 45(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. [Environmental Standards and Guidelines developed under this regulation shall have the aim to ensure the effective protection of the Marine Environment ~~from harmful effects~~ serious harm, in accordance with Article 145 of the Convention.]

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

- We propose that the reference to “harmful effects” in Draft Regulation 45(1) be replaced by the term “serious harm.”
- “Serious harm” is a term defined in the Draft Regulations, used throughout, and has a clear meaning.
- The Draft Regulations must take a consistent approach when using terms. New language regarding “harmful effects” should not be inserted at this late stage, as the term lacks clarity and creates ambiguity regarding the scope and impact of the regulations.
- We consider the requisite test as outlined in UNCLOS is to ensure effect protection of the Marine Environment from *serious harm*.

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

Draft Reg. 45(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 Council shall, based on the recommendations of the Commission, adopt Environmental Standards in accordance with regulation 94, inter alia on the following subject matters:

(a) Baseline investigations;

(b) Environmental quality objectives;

(c) Indicators and quantitative environmental thresholds; ~~including but not limited to:~~

~~(i) biodiversity status and ecosystem structures, functions and services;~~

~~(ii) sediment plume properties such as dispersion and dilution, resettlement, temperature, toxicity and composition;~~

~~(iii) water chemistry and temperature;~~

~~(iv) light emissions;~~

~~(v) noise and vibrations emissions and~~

~~(vi) habitat removal.~~

(d) Monitoring procedures

(e) Mitigation measures;

~~(f) Technical requirements for environment protection with regard to the equipment used for the Exploitation activities and~~

(g) Assessment of accidental events and natural hazards leading to environmental emergencies as well as environmentally hazardous discharges and residual effects of such emergencies, including preparation and implementation of emergency response and contingency plans.

(h) Procedural and substantive requirements relating to submissions or reports required by these regulations, including but not limited to: Plans of Work, Environmental Management Systems, Environmental Impact Assessments, Environmental Risk Assessments, Environmental Impact Statements, Environmental Management and Monitoring Plans and Closure Plans.

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

- We are concerned with some of the proposed contents outlined in sub-paragraphs (c) and (f) of Draft Regulation 45(2).
- In relation to sub-paragraph (c): we appreciate the on-going work being done to formulate appropriate thresholds. We expect that setting these thresholds will also involve an iterative process based on the accumulation of data from activities in the Area. As Annex IV, Paragraph 2 recognizes, these thresholds may also need to be contract area-specific and may change over time based on the data received from the activities. As such, we have proposed simplifying sub-paragraph (c) to ensure the Draft Regulations are not overly prescriptive in relation to the contents of the Environmental Standards. Referring to thresholds is sufficient to ensure the LTC is broadly empowered to consider and formulate relevant and appropriate thresholds. There is no need to specify in detail all of the relevant aspects of this, some of which may be less relevant depending on the circumstances.
- In relation to sub-paragraph (f): given the diversity of equipment and systems that may be used when undertaking activities in the Area, it will be difficult to formulate a detailed or precise Standard that will be relevant to all operations, and that is responsive to changes in equipment technology that may be hard to predict in advance. We also note that the other Standards contemplated – such as around thresholds – can be used to assess the impact and appropriateness of particular systems. There is thus no need to prescriptively specify exact requirements around such equipment in a separate Standard. As such, we propose deleting sub-paragraph (f) and to deal with these kinds of technical requirements through general direction contained in a Guideline.

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

Draft Reg. 45(3)/45Alt (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.

~~3. The Authority shall not approve any Exploitation activities unless the Environmental Standards have been adopted.~~

[Regulation 45 Alt.] 1. ~~[The Authority shall not approve any Exploitation activities unless the Environmental Standards and Guidelines have been adopted.] [Such Standards and approved Guidelines shall be] [developed] [adopted by] T~~the Council and Guidelines developed by the Commission ~~[in accordance with Regulations 94 and 95] [shall], based on the recommendations of the Commission, [develop] [Environmental Standards and Guidelines in accordance with regulations 94 and 95 and [must] [shall include], inter alia, [include] on~~ the following subject matters ~~[aimed at ensuring a Contractor does not cause Serious Harm to the Marine Environment]:~~

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

- We are very concerned that certain aspects of the Draft Regulations inappropriately impose absolute and arbitrary blocks on the ability of the Authority to consider and approve applications for exploitation contrary to the provisions of UNCLOS.
- The Authority should not be forced to wait until the Environmental Standards are adopted to approve an application for a Plan of Work for exploitation.
- The Authority can adequately assess such applications while the Standards are being developed and has a variety of sources to aid its work (including those specified in the Draft Regulations and UNCLOS, Annex III). There are also a range of appropriate protections and requirements regarding environmental matters throughout the regulations.
- As such, we propose deleting Draft Regulation 45(3) and the first sentence of Draft Regulation 45Alt(1).

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Draft Reg. 45Alt (1)(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) Mitigation measures of harmful effects to the marine environment, and where possible, remediation, [restoration and rehabilitation] or, [if restoration and rehabilitation are impossible,] compensation of ~~serious environmental~~ serious environmental harm to the Marine Environment, thereby following the mitigation hierarchy of avoid, minimize, remediate.

[(c) alt. Mitigation measures as defined in the Schedule, including priority order and descriptions of each step in the mitigation hierarchy and clarifications on their use, process and approvals as necessary.]

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

- We strongly support sub-paragraph (c) alt in Draft Regulation 45Alt, which enables a clearer approach to mitigation through the use of the Schedule. The original version of sub-paragraph (c) inappropriately includes language on compensation, though it should be focused on mitigation.
- Sub-paragraph (c) is also too broadly drafted, particularly its reference to “environmental harm”. All activities in the Area will entail some level of harm to the environment. Requiring compensation for every harm inflicted, no matter how minor, is excessive and unworkable.
- The Draft Regulations need a clear test for determining whether harm rises to the level of serious harm and therefore requires compensation. As such, if sub-paragraph (c) is retained, compensation should be limited to cases involving “serious harm to the Marine Environment”, consistent with the approach taken throughout the Draft Regulations.

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Draft Reg. 46bis(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. In addition to the Monitoring conducted by the Contractor pursuant to Paragraph 2.]~~ The Environmental Management and Monitoring Plan shall [cover all stages of the mining life cycle, and on submission for approval] contain a monitoring programme for at least the first ~~[seven]~~ [five] years of the mining project Exploitation, to be conducted ~~by independent experts – suitably qualified experts and~~ in compliance with the applicable Standards [and taking account of the relevant guidelines].

[3.Alt The Environmental Management and Monitoring Plan shall contain a monitoring programme for Exploitation, to be conducted in compliance with the applicable Standards.]

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

- We support paragraph 3.Alt in Draft Regulation 46bis over the amended paragraph 3. Paragraph 3.Alt is a concise and clear statement of the monitoring requirements to be included in an Environmental Management and Monitoring Plan.
- In contrast, the amendments to paragraph 3 include new terms that are not defined or used in the Draft Regulations. It is also unclear how paragraph 3 would operate in practice. Among other things, the Draft Regulations do not define what an “independent expert” is. As monitoring will generally be funded by Contractors, inserting such an undefined term creates uncertainty regarding the qualifications and roles of the experts retained by the Contractors and their ability to fulfill their responsibilities under the Draft Regulations.
- Furthermore, the monitoring contemplated under this regulation can be adequately conducted without outsourcing the work to “independent” experts. Under Article

165 of UNCLOS it is the role of the Commission to “*supervise, upon the request of the Council, activities in the Area*” and “*co-ordinate the implementation of the monitoring programme approved the Council*”. The Authority should not be trying to outsource these important responsibilities to external experts funded by Contractors.

- The Authority will have sufficient expertise, staff and resources to undertake its own monitoring and a detailed Inspection, Compliance and Enforcement regime is currently being negotiated. Adding in an additional external monitoring program through this Draft Regulation would only result in duplication and additional expense, and potentially lead to conflict and overlap with the Commission and the Authority’s work.
- As such, if amended paragraph 3 is adopted, we propose deleting the reference to additional monitoring by “independent experts” and instead just requiring that the monitoring be conduct with reference to the relevant Standard and Guidelines. Alternatively, this paragraph could reference the Authority conducting monitoring through the Commission and Council or other body.

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Draft Reg. 46bis(4)

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4. The Contractor shall report annually in writing, in accordance with these regulations, to the Secretary-General on the implementation and results of the Environmental Management and Monitoring Plan and the environmental monitoring programme referred to in paragraph 2, in accordance with Regulation 38, paragraph 2(g). The Secretary-General shall release publicly environmental data and information in the required standardized format, ~~in an accessible format,~~ ~~in~~ real time or at ~~monthly intervals~~ annually, if possible consistent with best scientific practices, environmental data and information in the required standardized format, and in accordance with the applicable Standards, and taking into account the applicable Guidelines. Other monitoring data, [pertaining for example to monitored variations in geochemistry or fauna] shall be released annually in the form of a written report. The Secretary-General shall transmit annual reports to the Commission for its consideration pursuant to article 165 of the Convention and publish them pursuant to Regulation 38(3).

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

- We consider that the timeframes for Contractor reporting and the Secretary-General’s public release of reports in Draft Regulation 46bis(4) should be consistent, and we have proposed language to this effect.
- Draft Regulation 46bis(4) requires Contractors to report annually to the Secretary-General while requiring the Secretary-General to release information “in real time or at monthly intervals.” As the Secretary-General’s information will only be updated annually, it should only be required to publish annually.

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Draft Reg. 46ter(3bis)

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3bis. ~~In addition to the Monitoring required to be performed by the Contractor, the Environmental Management and Monitoring Plan shall contain a supplementary monitoring programme for at least the first seven years of [Exploitation] [mining operations,] to be conducted by independent suitably qualified experts and in compliance with the applicable Standards.~~ The Contractor shall conduct monitoring for the entire duration of ~~[exploitation]~~ ~~[the mining operation]~~ and comply with any post-closure monitoring requirements ~~[according to Regulations 59-61 and the applicable Standard.]~~

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

- Consistent with our written submission on Draft Regulation 46(bis)(3), we strongly oppose a requirement for Contractors to engage additional “independent” experts to conduct monitoring as contemplated in Draft Regulation 46ter(3bis).
- The Draft Regulations do not define what an “independent expert” is. As monitoring will generally be funded by Contractors, inserting such an undefined term creates uncertainty regarding the qualifications and roles of the experts retained by the Contractors and their ability to fulfill their responsibilities under the Draft Regulations.
- Furthermore, Under Article 165 of UNCLOS it is the role of the Commission to “supervise, upon the request of the Council, activities in the Area” and “coordinate the implementation of the monitoring programme approved the

Council". The Authority should not be trying to outsource these important responsibilities to external experts funded by Contractors.

- The Authority will have sufficient expertise, staff and resources to undertake its own monitoring and a detailed Inspection, Compliance and Enforcement regime is currently being negotiated. Adding in an additional external monitoring program through this Draft Regulation would only result in duplication and additional expense, and potentially lead to conflict and overlap with the Commission and the Authority's work.
- As such, we propose deleting this language from Draft Regulation 46(ter)(3bis). Alternatively, this paragraph could instead reference the Authority conducting monitoring through the Commission and Council or other body.

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Draft Reg. 46(ter)(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 Contractor shall provide information ~~[in its annual report]~~ on the implementation of the Environmental Management and Monitoring Plan [in its annual report] in accordance with regulations 38, paragraph 2(g), and 46~~bister~~, paragraph 4, for evaluation by the Legal and Technical Commission, as well as [environmental data and information for] publicly release, in an accessible format, consistent with Best Scientific Practices monitoring data and information at a regular basis ~~[to be determined in each project]~~ [if possible, in real-time or on a monthly basis]. ~~[Other monitoring data, for example pertaining to monitored variations in geochemistry or fauna, shall be released annually in the form of a written report.]~~

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

- We consider that Contractors will need flexibility in relation to the timing of their provision of the information referred to in Draft Regulation 46(ter)(4) as it may not always be possible for Contractors to provide the specified information instantaneously or on a precisely monthly basis.
- As such, we propose inserting the phrase “if possible” into paragraph 4 to make clear the suggested timing in the Draft Regulations applies to the extent the timeframes are able to be met.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 47/47(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.

~~47 Environmental Impact Assessment Process~~

[...]

47 bis Environmental Impact Assessment

[...]

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

- We prefer Draft Regulation 47bis as the basis for this text. It sets clear and workable requirements for Environmental Impact Assessments without being overly prescriptive.
- Draft Regulation 47 is overly prescriptive, too detailed, and too absolute. It is not appropriate for inclusion as a Draft Regulation. It would create a rigid and inflexible regime for these Assessments that would not be able to appropriately respond to changing circumstances in the future.
- We need to ensure that the Draft Regulations remain fit-for purpose and appropriate to their intended task over time, without requiring regular amendments.

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

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1. Name of Working Group:

Informal Working Group – Environment.

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

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

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

Draft Reg. 47(2)(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.

2. The Environmental Impact Assessment Process shall:

[...]

(c) Include an environmental risk assessment and a survey of the seabed to identify Underwater Cultural Heritage that takes into consideration the region as a whole taking into account the objectives and measures of the relevant and applicable Regional Environmental Management Plan,

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

- As noted in our separate written submission, we oppose Draft Regulation 47 and prefer Draft Regulation 47bis as the basis for these provisions.
- We also note and appreciate the on-going work by the working group that is discussing an appropriate way to refer to and incorporate concepts around cultural heritage, underwater cultural heritage, and intangible cultural heritage into the regulatory regime. We note that the working group is yet to reach a consensus on these issues, including on the inclusion of these concepts or how they are to be defined.
- Given the on-going discussions in the working group, we consider it is premature to include reference to underwater cultural heritage in Draft Regulation 47. As such the reference should be deleted.
- Furthermore, we do not understand the rationale for including this reference in Draft Regulation 47(2)(c) and consider it to be redundant or ambiguous.

- The Environmental Impact Assessment Process is focused on the potential effect Area activities will have on the Marine Environment. The Assessment will already consider matters related to cultural heritage as an integral component of the work being done. There is no need to explicitly refer to this here.
- Draft Regulation 47(2)(c) would also inappropriately transform Environmental Impact Assessment Processes into positive obligations on Contractors to search for and identify Underwater Cultural Heritage, exceeding the Convention's requirements.
- The Convention imposes specific obligations regarding objects of an archeological and historical nature that may be found in the Area. It does not require Contractors to proactively survey or investigate for all Underwater Cultural Heritage objects.
- The proposed definition of "Underwater Cultural Heritage" currently contained in the Draft Regulations is also broader than the Convention's reference to "objects of an archaeological and historical nature". As written, it covers "all traces of human existence having a cultural, historical or archaeological character".

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 47(2)(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) Be subject to an independent scientific assessment prior to the submission of the proposed Environmental Impact Statement to the Authority.~~

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

- As noted in our separate written submission, we oppose Draft Regulation 47 and prefer Draft Regulation 47bis as the basis for these provisions.
- If Draft Regulation 47 is adopted, we oppose requiring an independent scientific assessment of the Environmental Impact Assessment Process prior to submitting the Environmental Impact Assessment Statement to the Authority.
- It is the role of the Authority to assess Environmental Impact Statements. This role should not be usurped by separate experts.
- Furthermore, the term “independent scientific assessment” is not defined in the Draft Regulations. As the assessment will be funded by the Contractor, inserting this undefined term creates uncertainty regarding whether the assessment is indeed “independent” or how such a determination will be made. This may also result in duplication and additional expense, and potentially lead to conflict and overlap with the Commission and the Authority’s work.
- We further note that this work will involve stakeholder consultation through which any interested parties – including from the scientific community – can review and comment on elements of interest.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 47 (3)(b)(vi)

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 Environmental Impact Assessment Process must follow certain procedural steps to having the plan of work assessed and entail the following elements:

[...]

(b) An assessment to describe the impacts on the marine environment ~~and Underwater Cultural Heritage~~ and predict the nature and extent of the Environmental Effects of the mining operation including residual impacts, also considering other existing and foreseen mining operations. This includes assessing:

~~(vi) The timing and duration of the impact relative to the period in which a species needs the habitat during one or more of its life history stages affected for its long survival.~~

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

- As noted in our separate written submission, we oppose Draft Regulation 47 and prefer Draft Regulation 47bis as the basis for these provisions.
- If Draft Regulation 47 is adopted, consistent with our prior written submissions on Draft Regulation 47, we oppose the use of the term “Underwater Cultural Heritage” in sub-paragraph 3(b). The existing reference to the marine environment – a term defined in the Draft Regulations – is sufficient here.
- We also propose deleting Draft Regulation 47(3)(b)(vi). It is not appropriate to require an assessment of “the timing and duration of the impact relative to the

period in which a species needs the habitat during one or more of its life history stages affected for its long survival” as part of the Environmental Impact Assessment Process. Such a requirement is unclear, unrealistic and excessively burdensome.

- Mining operations in the Area will likely encounter many separate species. As drafted, this provision could be read as requiring a comprehensive mapping and understanding of each separate species and their entire life history and then the impact of each element of the mining process upon the life history stages.
- This would clearly not be physically possible during the Environmental Impact Assessment Process and is better suited as a long-term monitoring and assessment objective.
- Such a requirement would also not be aligned with any major terrestrial mining regulatory regime and impose more onerous requirements than that imposed on land-based miners. The Draft Regulations should not impose disproportionate and novel requirements on Contractors where these have no analog for terrestrial miners. Doing so would unfairly prejudice deep seabed mining as compared to terrestrial operations.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 47bis(2)(a)/2(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.

2. The purpose of an environmental impact assessment under this regulation shall be to predict environmental impacts anticipated from the proposed activities, to enable the Authority to assess the potential adverse Environmental Effects, with the aim to:

a) Ensure effective protection for the marine environment from ~~harmful effects~~serious harm which may arise from such proposed activities,

[...]

c) Avoid Serious Harm to the Marine Environment arising out of the proposed activities,

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

- We propose deleting Draft Regulation 47bis(2)(a). Alternatively, we propose replacing the phrase “harmful effects” in Draft Regulation 47bis(2)(a) with the phrase “Serious Harm.”
- We continue to support effective protection for the marine environment, but some degree of harm from mining activities in the Area is unavoidable. The Convention and the 1994 Agreement recognize this explicitly. The Draft Regulations should adopt the same approach.
- Sub-paragraph 2(c) already sets an aim of this process as avoiding “Serious Harm to the Marine Environment arising out of the proposed activities.” “Serious Harm” is a defined term used throughout the Draft Regulations with a clear meaning.

- It is unclear whether sub-paragraph 2(a) intends to impose a separate standard with different harm thresholds and different obligations through its use of the undefined term “harmful effects”.
- Given the inclusion of sub-paragraph 2(c), sub-paragraph 2(a) is redundant and ambiguous and should be deleted.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 47bis(2)(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) Ensure that the proposed activities are carried out in accordance with the Rules of the Authority, ~~general International Law, including the Convention and the applicable Standard and taking into account the relevant Guidelines as well as, Best Available Scientific Evidence~~Information], Best Environmental Practices, and Best Available Techniques

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

- We propose deleting the reference to “general International Law” in Draft Regulation 47bis(2)(e), as it is unnecessary. The term is not used elsewhere in the Draft Regulations, and it is unclear what it is intended to cover in this context.
- Activities in the Area must comply with the Authority’s Rules, the Convention and applicable Standards. The reference to the Convention in Draft Regulation 47bis(2)(e) already incorporates all relevant elements of broader international law. This is sufficient to accomplish the provision’s intended purpose.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 47ter(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 shall consider a scoping report submitted in accordance with this regulation, and any comments and responses received, in accordance with any relevant Standards and taking into account Guidelines. Based on this review, within 60 days of its receipt of a scoping report, the Commission shall approve a scoping report, disapprove it or make recommendations to the applicant or Contractor regarding the proposed environmental impact assessment, accompanied by a detailed rationale.

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

- We propose specifying a timeframe in Draft Regulation 47ter(6) for the Commission to approve, disapprove or make recommendations regarding a scoping report.
- A timeframe will ensure that the Commission’s consideration of the scoping report cannot be indefinitely delayed and is consistent with the approach taken under the Convention for the Commission’s consideration of other matters.
- We welcome views on an appropriate time period for this timeframe and have suggested 60 days.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 47ter(8)

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.

8. The applicant or Contractor shall take into account the Commission’s recommendations under this regulation, or any recommendations or scoping reports concluded prior to the adoption of these Regulations and in accordance with an Exploration Contract, before proceeding with an environmental impact assessment process. Furthermore, the applicant or Contractor shall agree the final contents of the Scoping Report with the Commission either under these Regulations or pursuant to other applicable Regulations adopted by the Authority or in accordance with an Exploration Contract.

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

- We consider that it is important to recognize that existing Contractors may already be engaging in scoping work in accordance with their Exploration Contracts. That work should be taken into account for the purposes of Draft Regulation 47ter(8).
- If the Contractor has already completed sufficient scoping work prior to the finalization of these regulations, the Contractor should be allowed to proceed with its Environmental Impact Assessment Process on the basis of that 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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 48(3)(d)

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 Environmental Impact Statement shall be in a form prescribed by the Authority and must:

(d) Identify substantive and relevant comments received through public consultation on the environmental impact assessment and explain how each substantive and relevant comment has been incorporated or otherwise addressed

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

- We propose inserting the term “substantive” ahead of the final “comment” in Draft Regulation 48(3)(d) for consistency with the start of the sub-paragraph.
- Draft Regulation 48(3)(d) is focused on “substantive” comments. The Environmental Impact Statement should therefore only be required to explain how “substantive” comments have been incorporated or addressed.
- Consistent with our earlier written submission on Draft Regulation 47(3)(c) we also reiterate our previous proposal to include “and relevant” for the scope of comments to be addressed by the Contractor.
- It is not practicable or preferable for a Contractor to address all substantive comments received during Stakeholder consultation. This would include comments that are clearly irrelevant to the Environmental Impact Statement.
- It is reasonable, however, for a Contractor to explain how it has addressed substantive and relevant comments.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 48(3)(g)

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.

~~(g) Be peer reviewed by competent independent experts, before submission and include a description of the experts, their qualifications, and the results of their review.~~

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

- We propose deleting Draft Regulation 48(3)(g). It is not clear what a “competent independent expert” means, or how the expert reviewers can be selected and still be independent.
- We consider that requiring an external review of the Contractor’s Environmental Impact Statement prior to submission to Commission would usurp the role of the Authority and its subsidiary organs, specifically the Commission in the review process. This would result in duplication and additional expense, and potentially lead to conflict and overlap with the Commission and the Authority’s work.
- The Commission is empowered to appoint its own experts if necessary.
- Furthermore, requiring Contractors to locate and hire their own experts for review prior to submission will be lengthy and expensive. It is not clear whether qualified experts can be identified and retained – let alone complete their work – in the time period envisioned by the Authority for this process.
- We also note that the preparation of Environmental Impact Statements will involve stakeholder consultation through which any interested parties – including from the scientific community – can review and comment on its contents.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 48(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 Environmental Impact Statement should, but not limited to, entail the following elements, which are described in greater detail in [Annex IV/ Standard] the Guidelines.:~~

[...]

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

- The proposed Draft Regulation 48(4) is overly prescriptive and covers matters better left to the Guidelines. The Guidelines should simply be referenced here. There is no need to detail each separate element of the Environmental Impact Statement.
- Consistent with our other written submissions, the Draft Regulations must remain fit-for-purpose and appropriate for governing a range of conditions over a period of time.
- As discussed by the Council’s IWG, Regulations that are too prescriptive, absolute or specific risk becoming inflexible and unworkable.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 48(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) An outline of applicable national and international legislation, procedures and policies, for example the Convention including the 1994 Agreement relating, relevant rules from the International maritime Organization and International Law in general,

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

- We reiterate our position that all of the sub-paragraphs in Draft Regulation 48(4) be replaced by a reference to the Guidelines.
- If Draft Regulation 48(4)(c) is retained, we propose deleting the reference to the “relevant rules from the International Maritime Organization and International Law in general”, as it is unnecessary and irrelevant.
- The Environmental Impact Statement should outline applicable national and international legislation, procedures and policies. There is no need to specifically refer to one set of international rules, nor “international law in general”.

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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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 48(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 Environmental Impact Statement of every ~~project~~ Plan of Work, including any revisions, should be available [for at least 60 days on the official website of the International Seabed Authority in the interests of transparency. ~~of the whole process.~~

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

- We propose that the term “project” in Draft Regulation 48(5) be replaced with the term “Plan of Work.” This will ensure consistency of terminology across the regulations.
- We also propose deleting the phrase “of the whole process”, as it is unnecessary and irrelevant. It adds nothing substantive to the requirements expressed in Draft Regulation 48(5) and is therefore liable to create ambiguity or confusion.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 48bis.

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 48 bis~~

~~New Environmental Impact Assessment and Revised Environmental Impact Statement~~

[...]

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

- We propose deleting Draft Regulation 48bis as it is unnecessary and duplicative.
- The Draft Regulations already cover the situations where new Environmental Plans, Assessments or Statements might be needed (particularly where a Material Change occurs). There is no need to replicate those requirements in a separate regulation, as doing so may introduce inconsistencies or ambiguities.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 48ter(1) 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. ~~Except as specified in Subject to~~ this Regulation, an applicant shall conduct a ~~“test mining”~~ ~~project~~ prior to submitting an application for a Plan of Work for Exploitation. Information gathered through ~~“test mining”~~ ~~projects~~ shall be compiled in a ~~“test mining report”~~ in accordance with Annex IV, ~~be in accordance with~~ ~~and/or taking into account~~ the relevant Standard ~~and taking into account the relevant~~ ~~or~~ Guideline and shall inform ~~on~~ the ~~Environmental Plans application for a Plan of Work for Exploitation pursuant to Regulation 11.~~

~~2. [The purpose of] [t] [“T]est mining”~~ ~~[means an in-situ testing of the integrated system of all relevant equipment (e.g. collector, raiser and release techniques) in a contract area and process steps for an exploitation activities under such technical, spatial and temporal conditions which allows the testing]~~ ~~[shall be]~~ to provide evidence ~~to support the information provided by an applicant in its application for a Plan of Work for Exploitation, and to assist the Commission in its evaluation of the application against the criteria contained in regulation 13~~ ~~[by information gathered through test mining projects]~~ to ensure that the proposed mining equipment is technically appropriate ~~and,~~ ~~and~~ that the Marine Environment is effectively protected from harmful effects, ~~[including the cumulative effects,] in accordance with Article 145 of the Convention~~ ~~[and that the effects could be monitored. “Test mining” should also be undertaken in order to optimize the integrated system with regard to its potential effects on the Marine Environment.]~~

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

- We note the on-going and useful work of the working group that is looking at these provisions. We look forward to their report and proposed new text which will inform the drafting of these regulations.
- We propose merging paragraphs 1 and 2 of Draft Regulation 48ter given that they both relate to setting the meaning of “test mining” and establish the key concepts regarding “test mining”.
- We have proposed clarifying amendments to these paragraphs to:
 - make clear that the obligation to conduct test mining is subject to the exception in paragraph 3 which allows applicants to make use of information gathered in other test mining where this is demonstrated to be sufficient;
 - reflect that test mining can inform more than just Environmental Plans, and can be used more generally to prepare applications for Plans of Work for Exploitation;
 - remove the reference to Draft Regulation 11 as its relevance is not clear to this provision given that Draft Regulation 11 relates to “Publication, notification and review”;
 - remove the reference to process steps in the definition of “test mining” as it is unclear what this is intended to cover. The current definition of “test mining” in the relevant Recommendations does not refer to processing,¹ which is distinct from *mining* and so should not be included here;
 - add in additional clarification regarding what the evidence gained from test mining is intended to be used for;
 - remove the reference to cumulative effects as it would not be possible for one applicant’s “test mining” to determine cumulative effects, the reference to Article 145 of UNCLOS also inappropriate elevates one, isolated part of the Convention; and
 - remove the reference to optimizing integrated systems as this definition regulation should not be used to create substantive obligations such as this. We also note that requiring “test mining” for all optimization would disincentive such work which would thus hinder the improvement of operations in the Area.

¹ The Recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area (ISBA/25/LTC/6/Rev.2) defines “test-mining” as “The use and testing of a fully integrated and functional mining system including collection systems and water discharge systems.”

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 48ter(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. [~~“Test mining”~~] in the Area [~~projects~~] require[s] a[~~n~~] [~~prior~~] approval by the Authority and shall be carried out in accordance with the [~~rules, regulations and procedures for exploration and the recommendations for the guidance of contractors~~] [~~relevant Standard and taking into account the relevant Guideline and Recommendations~~], in particular [~~the assessment of possible environmental~~] [~~to ensure that the Marine Environment is effectively protected from harmful effects serious harm, including the cumulative effects, in accordance with Article 145 of the Convention~~] [~~impacts arising from the exploration for marine minerals in the Area~~].

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

- We note the on-going and useful work of the working group that is looking at these provisions. We look forward to their report and proposed new text which inform the drafting of these regulations.
- We propose to clarify that it is “test mining” in the Area that must be approved by the Authority.
- We also propose referencing the relevant Recommendation, Standard and Guideline in Draft Regulation 48ter(3).
- Consistent with our other written submissions, it is important to align these Draft Regulations with the existing exploration framework for test mining. The Regulations should not impose a higher standard for test mining than the threshold already in place under the existing framework.

- We also propose to replace “harmful effects” with “serious harm” for consistency across both the exploration and exploitation regulations.
- Consistent with our written submission on Draft Regulation 48(1), we propose to delete the reference to “cumulative effects” as it is not possible for one applicant’s “test mining” to consider cumulative effects nor is it appropriate to elevate one part of UNCLOS by specific reference to it in this regulation.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 48ter(4), (5), (6), and (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.

4. ~~[A new t]~~ [“Test mining”] ~~[project]~~ does not have to be undertaken if the evidence pursuant to Paragraph 1 has been provided through other [“test-mining”] ~~[projects]~~ by the applicant, by other contractors, or in the context of another approved Plan of Work for exploration or [Ee]xploitation. In such a case, the applicant shall compile in its [“test-mining”] report the information already available ~~[and explain,]~~ ~~[explaining]~~ why this is sufficient evidence and the Commission shall assess whether the evidence pursuant to Paragraph 1 has been demonstrated in its review of the application and report to the Council pursuant to Regulations 11-15.

5. ~~[After the approval of a Plan of Work, a validation monitoring system shall be established by the contractor, in line with the Environmental Management and Monitoring Plan, in order to monitor whether the requirements of the Plan of Work are complied with. In case of non-compliance, Regulation 52 will apply.]~~

6. ~~[The gains royalties from mineral resources which have been collected during ‘test mining’ shall be paid to the Environmental Compensation Fund, as established by Regulation 54.]~~ Prior to the commencement of Commercial Production, the contractor shall provide the Authority with a test mining royalties report containing the information specified in the Standards and Guidelines in respect of any minerals collected during ‘test mining’. Royalties in respect of mineral resources that have been collected during ‘test mining’ shall be paid at the time the contractor makes its first payment of royalties after the date it commences Commercial Production.

7. If a material change has been determined in accordance with Regulation 25 and 57 (2), the relevant organ of the Authority shall consider and determine whether and on which aspects an additional ["test mining" ~~project~~ has may have to be undertaken in order to provide sufficient information pursuant to paragraph (2). In this case, paragraphs (1) and (3) apply.

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

- We note the on-going and useful work of the working group that is looking at these provisions. We look forward to their report and proposed new text which inform the drafting of these regulations.
- We propose amending Draft Regulation 48ter(4) to allow applicants to make use of "test mining" done by other Contractors. This ensure there is sufficient flexibility and avoid unnecessary duplication of testing, particularly testing in the Area.
- We propose removing Draft Regulation 48ter(5) as its substantive contents will already be captured under the Contractor's Environmental Management and Monitoring Plan. Reiterating these requirements here is duplicative and unnecessary. The contents of Draft Regulation 48ter(5) do not relate to test mining and instead should be included in the relevant Environmental Management and Monitoring Plan Standard & Guideline if it is needed.
- In relation to Draft Regulation 48ter(6), we understand the working group view is that this should be moved to the financial regulations – and we support such a move. We also emphasise that the appropriate term is not "gains" but "royalties". "Royalties" reflects the correct legal status of mineral resources gained from test mining.
- Title in nodules and other mineral resources collected during test mining projects belongs to the Contractor. The Authority is, at most, entitled to royalties from such resources.
- We have also proposed language in Draft Regulation 48ter(6) to provide a clear method for the payment of royalties associated with minerals extracted through "test mining".
- We have also proposed that Draft Regulation 48ter(7) not oblige additional "test mining" but instead allows for discretion in relation to whether or not this is required in any particular case.

**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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 49

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.

A Contractor shall take all the necessary ~~[and appropriate]~~ measures to protect and preserve the Marine Environment ~~[and the coastlines]~~ ~~[from harmful effects]~~ Serious Harm, ~~[in accordance with Article 145 of the Convention]~~, by preventing, reducing and controlling pollution and other hazards ~~including marine litter and underwater noise,~~ ~~[that arise]~~ from its activities in the Area. This is to be done in accordance with its Environmental Management and Monitoring Plan and all relevant Rules of the Authority, ~~[the relevant applicable Regional Environmental Management Plan,]~~ ~~[and]~~ taking account of the applicable Guidelines ~~[and the relevant applicable Regional Environmental Management Plan]~~. ~~if a potentially polluting wreck is discovered and it is an object of an archaeological and historical nature, then the duty to protect such heritage must also be considered consistent with Article 149 [of the Convention.]~~

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

- Consistent with our written submission on Draft Regulation 96(7), we propose replacing the term “harmful effects” in Draft Regulation 49 with the term “Serious Harm”.
- The Authority’s Rules, Regulations and Procedures should take a consistent approach to terms used and adopt the standard of Serious Harm in all instances involving effective protection of the marine environment.
- Furthermore, we propose removing a variety of the factors mentioned in Draft Regulation 49, as they are extraneous, unnecessary, or covered elsewhere in the Draft Regulations (such as those addressing archeological concerns).

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

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1. Name of Working Group:

Informal Working Group – Environment.

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

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

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

Draft Reg. 50(2)/(2.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. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is necessary for the safety of the vessel or Installation or the safety of human life, provided that such disposal, dumping or discharge is conducted so as to allminimize the likelihood of harm to human life and prevent Harm to the Marine Environment. If Serious Harm to the Marine Environment occurs as a result of disposal, dumping or discharge, the Contractor shall monitor, [and] Mitigate [and remediate] the impacts of such harm, and shall report forthwith about such disposal, dumping or [discharge] to the Authority.~~

[2.Alt. Paragraph 1 above shall not apply if such disposal, dumping or discharge into the Marine Environment is necessary for the safety of the vessel or Installation or the safety of human life, provided that such disposal, dumping or discharge is conducted so as to minimize the likelihood of harm to human life and prevent Harm to the Marine Environment.]

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

- We consider that Draft Regulation 50(2.Alt) is a clearer and more concise statement of this provision and propose deleting Draft Regulation 50(2).
- Drafting Regulation 50(2.Alt) is clear, concise and capable of covering the necessary response to disposal, dumping or discharge without imposing additional monitoring obligations that are difficult to measure and are not time-limited.

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

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1. Name of Working Group:

Informal Working Group – Environment.

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

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

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

Draft Reg. 50(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 applicant or contractor must also keep a register of discharges [~~to be updated at least weekly, monthly, where possible~~], ~~allowing it to be consulted in real time~~, that shall be reported annually to the Authority as part of the mandatory annual report that must be prepared throughout the operation.

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

- We propose requiring a monthly update to the register of discharges required by Draft Regulation 50(5) and adding further language (“where possible”) to reflect the commercial and practical realities of conducting activities in the Area.
- Our proposed amendments allow the Contractor flexibility to fully comply with the Draft Regulations and ensuring the Authority has access to all of the information it requires without incurring an undue burden.

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

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Informal Working Group – Environment.

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

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

Draft Reg. 51(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.

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

(a) Monitor continuously in accordance with the applicable Standard, ~~[on Environmental Monitoring]~~ release ~~[environmental]~~ monitoring data publicly, in accordance with regulation 46ter, paragraph 4 in an accessible format consistent with best scientific practice, ~~[in real time] where possible [on a monthly basis]~~ and report annually under regulation 38 (2) (g) on the Environmental Effects of its activities on the Marine Environment, including a comparison between baseline data and monitoring data to document the actual effects on the Marine Environment and manage all such effects as an integral part of its Exploitation activities as set out in the relevant Standards and taking into account the relevant Guidelines referred to in regulation 45;

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

- We propose adding the term “where possible” to the real time monitoring requirement contained at Draft Regulation 51(a) to better reflect the commercial and practical realities of conducting activities in the Area. Real time monitoring may not always be technically feasible or commercially viable.

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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.

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Informal Working Group – Environment.

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

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

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

Draft Reg. 52(2)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.

2bis. An ad hoc performance assessment may be requested by the Council ~~[or the]~~ [[Compliance body]] following:

- (a) An Incident ~~or Notifiable Event;~~
- (b) Receipt of an unsatisfactory annual report;
- (c) Issuance of a compliance notice or
- (d) When deemed necessary by the Council in response to third-party ~~[or whistle-blower]~~ information submitted to the Council.

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

- We propose removing the term “Notifiable Event” from Draft Regulation 52(2bis).
- It is excessive to include a Notifiable Event as a trigger for an ad hoc performance assessment. Not all Notifiable Events will occur in circumstances suggesting that a performance assessment is necessary.
- We also support the removal of “whistle-blower” in sub-paragraph (d), and consider that these kind of provisions would be more appropriate in the context of the Inspectorate.

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

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1. Name of Working Group:

Informal Working Group – Environment.

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

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

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

Draft Reg. 53(2)/50bis(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 Authority shall facilitate the exchange of knowledge, information and experience relating to incidents between Contractors and States, and shall draw on the advice of other relevant international organizations, so that such knowledge and information can be used to prevent, reduce and control pollution and other hazards to the Marine Environment, including the coastline, by: [...]

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

- We propose removing the additional language “including the coastline” from Draft Regulation 53(2)/50bis(2), as the scope of the obligation is already covered by the defined term “Marine Environment.”

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COUNCIL - PART III**

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1. Name of Working Group:

Informal Working Group – Environment.

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

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

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

Draft Reg. 54(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 rules and procedures of the Fund shall be established by the Council on the recommendation of the Finance Committee before the ~~approval of a first plan of work for a[n] exploitation contract~~ beginning of Commercial Production under these regulations.

Explanation/comment

- When reading this regulation I see a need for underlining the importance of that the rules and procedures of the Fund shall be established by the Council before the approval of a first plan of work is given. Also, it is important that the rules and procedures of the finance committee are clarified to assist in streamlining the regulations. I invite for views on whether participants share this view and, if so, how this can be stressed

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

- We propose that the deadline for establishing the rules and procedures of the Environmental Compensation Fund (ECF) under Draft Regulation 54(2) be linked to the beginning of Commercial Production rather than the approval of a Plan of Work.
- The approval of a Plan of Work is a key facet of the Contractor’s ability to begin its preparations to conduct commercial operations in the Area. Its approval should not be delayed due to the lack of finalized ECF rules and procedures.
- We do not consider that ECF rules and procedures need to be settled before a Plan of Work is approved.

- The Fund is linked to the effects of Commercial Production and therefore its rules and procedures will only be needed prior to Commercial Production commencing. Necessary preparatory work – including approval of a Plan of Work – should not be delayed by the preparation of these rules and procedures.

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COUNCIL - PART III**

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1. Name of Working Group:

Informal Working Group – Environment.

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

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

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

Draft Reg. 55/55.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.

~~Regulation 55~~

~~Purpose of the Environmental Compensation Fund~~

[...]

[Regulation 55.Alt

Purpose of the Environmental Compensation Fund

1. Based on the polluter pays principle the Contractor shall pay for any necessary measure to limit, remedy and compensate any unlawful damage to the Area arising from the mining activities.

2. In cases where situations may arise, where a Contractor does not meet its liability in full while the Sponsoring State is not liable under Article 139 (2) of the Convention, the compensation fund may be used.

3. The purpose of the Fund is to finance the implementation of any necessary measures designed to mitigate or compensate for any unlawful loss or damage to the marine environment of the Area or coastal states, arising from exploration exploitation activities in the Area. This includes the restoration and rehabilitation of the Area when technically and economically feasible and in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques when the costs of such measures and efforts cannot be recovered from a Contractor or Sponsoring State, as the case may be for environmental damage outside of consented lawful activity. Compensation shall include the costs for implementation of any necessary measures designed to prevent, reduce, mitigate, limit, and remediate any unlawful damage to the marine environment and its resources.]

Explanation / comment

- Several participants have proposed to refer to the “polluter pays principle” in paragraph 2 instead of the “precautionary principle”. I fully support this suggested change.

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

- We support the proposed Draft Regulation 55.Alt, with limited edits as proposed, and propose that the original Draft Regulation 55 be deleted.
- Draft Regulation 55.Alt clearly and concisely sets out the relevant obligations regarding damage to the Area and the purpose of the Environmental Compensation Fund (ECF). The ordering of its paragraphs also makes it more straightforward to follow the regulation than the original provision.
- We have proposed limited edits to Draft Regulation 55.Alt for greater clarity.
- First, we agree with the Chair that the correct term here is the “polluter pays principle.” Reference to the “precautionary principle” is unwarranted in this context and has no bearing on the issues covered by Draft Regulation 55.Alt. Under the polluter pays principle, the Contractor should be required to compensate unlawful damage to the Area arising from mining activities, not any damage no matter how minor or how caused.
- Second, the ECF should be limited to the remediation of unlawful damage, in circumstances where the Contractor is unwilling to remediate and the Sponsoring State has met its due diligence obligations.
- This is consistent with the stated purpose of the ECF, as well as the study prepared by the Authority on the ECF’s role and composition, and the comments made by the SDC in its Advisory Opinion. Reflecting this, the phrase “consented activity” should be replaced with the phrase “lawful activity” for clarity and consistency.

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COUNCIL - PART III**

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Informal Working Group – Environment.

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

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

Draft Reg. 55(1)/(1 Alt), (2)/(2.Alt), (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.

1. The purpose of the Fund is to finance the implementation of any necessary measures designed to mitigate or compensate for ~~[any] unlawful~~ loss or damage to the ~~[Marine Environment of the]~~ Area or coastal states, ~~[or damage caused to third parties]~~ arising from ~~[exploration] [Exploitation] [activities in the Area] [when the costs of such measures and efforts cannot be recovered from a Contractor or Sponsoring State.]~~ This includes ~~[the remediation restoration and rehabilitation of the] Area-] [Marine Environment (when the rehabilitation is technically and economically feasible)] [and]~~ in accordance with Good Industry Practice, Best Environmental Practices and Best Available Techniques ~~[when the costs of such measures and efforts cannot be recovered from a Contractor or Sponsoring State, as the case may be for environmental damage outside of consented activity.]~~ Compensation ~~[can be used in cases when the restoration and rehabilitation are impossible. shall include the costs for implementation of any necessary measures designed to prevent, reduce, mitigate, limit, and remediate any damage to the marine environment and its resources.]~~

[1 Alt. The purpose of the Fund is to finance compensation and mitigation costs, which cannot be borne by the Contractor or Sponsoring State as the case may be, for environmental damage outside of consented activity.]

2. Based on the ~~[precautionary-] [polluter pays]~~ principle the Contractor pay for ~~any~~ necessary measure to limit, remedy and compensate ~~any unlawful~~ damage to the Area arising from their ~~[mining Exploitation]~~ activities.

[2.Alt. Based on the precautionary principle the contractor shall pay for necessary measures to limit, remedy and compensate damage to the Area arising from exploitation, outside of consented activity.]

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

- Consistent with our other written submissions, our primary position is that Draft Regulation 55 should be deleted and replaced with Draft Regulation 55.Alt.
- However, if Draft Regulation 55 is maintained, we prefer Draft Regulation 55(1) over Draft Regulation 55(1 Alt). Draft Regulation 55(1) clearly sets out the purpose of the Fund and how it is intended to be used and provides important detail that is missing from Draft Regulation 55(1 Alt).
- Our proposed edits to Draft Regulation 55(1) are intended to cut down on imprecision, clarify this relates to unlawful loss and damage, and remove unnecessary wording to clarify the intended remit of the Fund.
- We propose amendments to Draft Regulation 55(2), to clarify the scope of obligation on Contractors regarding payments related to damage in the Area given that purpose of the Fund and existing obligations upon Contractors regarding limiting, remediating and compensation for damage.
- We also propose to change “mining activities” in Draft Regulation 55(2) to “Exploitation activities” to ensure consistent use of terms throughout the regulations.
- We strongly oppose Draft Regulation 55(2.Alt), and propose it be deleted. The proposed reference to the precautionary principle is inconsistent with the Draft Regulations’ limited and specific use of the term “precautionary approach”.
- Draft Regulation 55(2.Alt) also fundamentally misunderstands the precautionary principle, which is a risk management standard applied to proactive action taken in the face of uncertain scientific evidence, not a compensatory theory of liability for environmental harm.

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COUNCIL - PART III**

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1. Name of Working Group:

Informal Working Group – Environment.

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

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

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

Draft Reg. 56(a)/(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.

In adherence to the [precautionary] polluter-pays principle the Fund will consist of, but not be limited to, the following monies:

(a) The prescribed percentage or amount of fees paid [after approval of a plan of work and] prior to the commencement of ~~mining~~ Commercial Production by Contractors or the Enterprise to the Authority;

~~[(a) alt. The requirements and modalities governing contributions to the Fund in accordance with regulation 56, including the establishment of the minimum size of the fund, and the modalities for replenishment of the fund upon disbursement]~~ _____

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

- We prefer Draft Regulation 56(a) and therefore propose deleting DR56(a)Alt, which is unclear and does not provide meaningful direction on the composition of the Environmental Compensation Fund (ECF).
- We support the additional language at Draft Regulation 56(a) confirming that the ECF will consist of the prescribed percentage or amount of fees paid after approval of a Plan of Work. Requiring Contractors to pay monies into the ECF before they even receive such approval is inappropriate, as the Contractors have no surety that they will be allowed to commence exploitation activities in the Area before such approval is received.
- Consistent with our last written submissions on this provision, we also propose replacing “mining” with “Commercial Production” for consistency of use of terms throughout the regulations.

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

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1. Name of Working Group:

Informal Working Group – Environment.

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

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

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

Draft Reg. 59 (1.bis)(a) and (d)

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 The objectives of a Closure Plan are to ensure that:

~~(a) The marine environment will have a clear and healthy status following the end of mining activities,~~

[...]

~~(d) The mined site is returned to its natural state, or returned to its natural state to the extent possible, through rehabilitation and restoration,~~

(d) The Mining Area is returned, to the extent possible, to a condition resembling its pre-mining condition through active restoration. Where active restoration is not feasible, the Mining Area is rehabilitated to facilitate passive restoration.

Explanation / comment

- At our last meeting, several participants called for streamlining this and other regulations. Some participants agreed to form an intersessional working group to rework and submit a revised/streamlined version of regulation 59, using the previous version of the regulation as a basis. I thank the group for its hard work and for the submitted proposal which I have reviewed and will use as the basis of this regulation going forward.

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

- We propose deleting Draft Regulation 59(1.bis) and moving the Closure Plan objectives to the Standards and Guidelines, which will allow greater detail and

prescription. The Draft Regulations should only outline the obligation to prepare and revise a Closure Plan.

- For example, a “clear and healthy status” for the marine environment is ambiguous has no clear meaning and is therefore inappropriate for inclusion in the Draft Regulations. By including these objectives in a Standard and Guideline we can ensure there is appropriate clarity and certainty regarding what is required.
- If DR59(1.bis) is retained, we propose deleting the language requiring a mined site to be “returned to its natural state, or returned to its natural state to the extent possible, through rehabilitation and restoration.” This is an impossible objective to achieve, particularly in the context of polymetallic nodules, which are generated over a lengthy process over significant periods of time. The inclusion of this language would hold Contractors to an unrealizable standard that would not be able to be achieved.
- We propose alternative language, making it clear that the Contractors have an obligation to rehabilitate and restore the mined site to the extent possible without demanding a return to a full pre-mining state which is not possible.
- In relation to the Chair’s comment, we consider that any prescriptive detail is better placed in the Standards and Guidelines, while the actual obligation to prepare and revise the Plan should be in the regulations.

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

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1. Name of Working Group:

Informal Working Group – Environment.

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

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

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

Draft Reg. 60(2) and (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.

[2. The Commission shall examine the Final Closure Plan and any comments received pursuant to paragraph 1bis and revisions and responses made pursuant to paragraph 1ter at its next meeting, provided that these have been circulated at least [30] [60] Days in advance of the meeting, within 90 days of receipt of the Final Closure Plan. The Commission should, where necessary and appropriate to ensure sufficient technical expertise, consult external experts, identified in accordance with Annex [VIII] to evaluate the Final Closure Plan.]

[...]

6. [At its next available meeting Within 90 days of receipt of any representations made or any revised final Closure Plan submitted, the Commission shall consider any such representations made or revised final Closure Plan submitted by the Contractor when preparing its report and recommendation to the Council, provided that the representations have been circulated at least [30] [60] Days in advance of that meeting.]

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

- We reiterate our objection made in other written submissions to tethering Commission approval of documents such as the Final Closure Plan to its twice-yearly meetings.
- The Commission is empowered to work intersessionally and should examine the Closure Plan, revisions to the Closure Plan or any representations made to that effect, within 90 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:

Informal Working Group – Environment.

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

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

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

Draft Reg. 61(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 Contractor shall continue to monitor the Marine Environment for [such period] [X years] after the cessation of activities, as set out in the final Closure Plan and for the duration provided for in the Standards and taking into account Guidelines, until the closure objectives have been achieved as set out in the final Closure Plan.~~

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

- We are concerned that stipulating a monitoring period of a specific number of years in Draft Regulation 61(2) would be arbitrary, overly burdensome and lack a clear link to the purpose of the Closure Plan and post-activity monitoring obligations.
- We propose that monitoring continue only until the closure objectives set forth in the Closure Plan have been realized.

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COUNCIL - PART III**

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Informal Working Group – Environment.

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

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

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

Draft Reg. 61(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. Upon completion of implementation of the Final Closure Plan, the Contractor shall, in accordance with the procedure described in the Standard, hire a competent, independent and accredited auditor to conduct a final compliance assessment and submit a final compliance assessment report according to the relevant Standards and taking into account relevant Guidelines to the Secretary General to ensure that the closure objectives contained in the final Closure Plan have been met. Such report shall be reviewed by the Commission at its next meeting, provided that it has been circulated at least 30 Days in advance of the meeting.~~

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

- We propose deleting Draft Regulation 61(3). Consistent with our other written submissions it is not appropriate or necessary for the Contractor to have to hire its own auditor or expert to verify compliance. That is the primary role of the Authority and the Commission. Inserting these requirements merely adds costs and usurps the regulatory role of the Authority.

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

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

Draft Reg. 61(3.bis) and (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.

3.bis The Commission shall provide a report and recommendations on that performance assessment report to the Council for consideration, who shall decide whether the final Closure Plan has been satisfactorily delivered the objectives of the final Closure Plan have been achieved, which decision shall be relevant to the retention, release, forfeiture or use by the Authority of the Contractor’s Environmental Performance Guarantee. The report shall be published on the website of the Authority.

4. If, on the basis of the auditor’s report and Commission’s recommendations provided pursuant to paragraphs (3) and (3bis), the Council decides that a Contractor has failed to meet the conditions of, or deadlines related to the objectives of the Final Closure Plan and reporting hereon, the Council shall direct the Contractor what further action must be taken to achieve the objectives of satisfactory delivery of the Closure Plan.]

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

- Consistent with our written submission that Draft Regulation 63(3) should be deleted, we propose deleting the reference to the performance assessment report in Draft Regulation 63(3.bis) and the reference to the auditor’s report in Draft Regulation 63(4).
- We also propose that Draft Regulation 61(3.bis) should require the Council to determine “whether the objectives contained in the final Closure Plan have been achieved” rather than focus on only the delivery of the Plan and an associated change

in Draft Regulation 61(4). This determination will allow the Authority to consider whether the Contractor has complied with its obligations under these RRP's and to make any relevant decisions regarding the Contractor's Environmental Performance Guarantee.

- Simply allowing the Council to "decide whether the final Closure Plan has been satisfactorily delivered" is insufficient to ensuring the Plan's efficacy, as it is possible to deliver a Closure Plan without achieving its objectives.

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COUNCIL - PART III**

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1. Name of Working Group:

Informal Working Group – Environment.

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

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

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

Annex Xter, Paragraph 13 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.

[13 Alt. Post mining monitoring shall continue until monitoring results show a trajectory towards recovery of ecosystem function ~~returns to the level of the pre-mining condition~~ agreed within the EMMP/Closure Plan and taking into account the time taken to reach a new equilibrium state.]

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

- We are concerned that the proposed requirement in paragraph 13 Alt for post-mining monitoring to continue “until ecosystem function returns to the level” of pre-mining conditions would be excessively lengthy or impossible to achieve. The sites, while adequately protected during mining activities by the Serious Harm standard, may not return fully to pre-mining conditions, at least not on a local scale.
- We propose that post-mining monitoring continue until there is a demonstrable trend towards eventual ecological recovery, linked to the standards agreed in the Final Closure Plan.

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

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

Schedule

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.

N/A.

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

- We note that the current Schedule does not include a definition of “harmful effects”, which is used throughout these regulations. Nor does the Schedule explain how “harmful effects” and “Serious Harm” differ from each other, or whether they apply different thresholds and obligations.
- We maintain our position that all references to “harmful effects” be replaced by a reference to the clearer and defined term of “Serious Harm.”