

**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:

President's text

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

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

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

Preamble 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.

Preamble Alt.

In accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Convention"), the Area and its resources are the common heritage of mankind, and the Exploration and Exploitation of the resources of the Area shall be carried out for the benefit of mankind as a whole, on whose behalf the Authority acts.

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

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

- We support the alternative Preamble, which is concise and clearly captures the intent and purposes of the Regulations. It is also more consistent with the approach taken in the Exploration Regulations.
- We have proposed two insertions to ensure the Preamble is consistent with the Convention and the Regulations.
- We propose to insert "Exploration and" into the first paragraph of the Preamble to recognise that both exploration and exploitation must be carried out for the benefit of all humankind and given that both activities can be carried out under an exploitation contract.
- Our proposal for the second paragraph ensures it more closely reflects the language of Article 145 of UNCLOS.

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Draft Regulation 17(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. The exploitation contract and its schedules is a public document, and shall be published [without delay] ~~[7 days]~~ in the Seabed Mining Register, except for Confidential Information, which shall be redacted.

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

- We support the use of "without delay" in Draft Regulation 17(3) to set the period within which the contract will be published rather than setting a specific number of days.
- We do not consider it appropriate or useful to be prescriptive in relation to the time period in this paragraph.
- The time for publication may require flexibility depending on the precise content, circumstances and timing of the conclusion of the contract, including to protect any confidential elements.

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Draft Regulation 18(1)(a) and (b)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

1. An exploitation contract shall confer on a Contractor ~~the~~ [or the Enterprise] the exclusive right to:

(a) Explore for the specified Resource category in accordance with ~~[paragraph 7 below] paragraph 7~~ [relevant Standards and taking into account any Guidelines, in accordance with Good Industry Practice, Best Available Scientific Evidence, Best Environmental Practices, and Best Available Techniques];

(b) Exploit the specified Resource category in the Contract Area in accordance with the approved Plan of Work [and regulations 18bis and 18ter], provided that ~~[production]~~ [mining operations exploitation activities] shall only take place in approved Mining Areas [and subject to prerequisites prescribed under regulation 25(6)].

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

- We do not support the proposed replacement of "paragraph 7" in Draft Regulation 18(1)(a) with a reference to Standards and Guidelines.
- The intent behind Draft Regulation 18(1)(a) is to specify that an exploitation contract also provides certain exploration rights to Contractors. The requirements for such exploration are set out in paragraph 7, which specifies that such exploration is subject to the "applicable Exploration Regulations". As such, there is no need for a separate reference in Draft Regulation 18(1)(a) to "Standards" or "Guidelines" for such exploration as this is already covered by paragraph 7. To avoid any inconsistency or duplication of requirements, the reference to paragraph 7 should be maintained.

- We also propose replacing “mining operations” with “exploitation activities” in Draft Regulation 18(1)(b) for clarity and consistency with the rest of the regulations.
- Draft Regulation 18(1)(b) relates to the right to “exploit” certain resources. Exploit and exploitation are terms with clear scope and meaning. For consistency and to avoid any ambiguity regarding the right being conferred, the same term should be used when referring to the same concepts rather than introducing a new term “mining operations”.

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

Draft Regulation 18(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. The Authority, in consultation with a Contractor, shall ensure that no other ~~[Contractor]~~ ~~[entity]~~ entity operates in the Contract Area for a different category of resources in a manner which might interfere with the rights granted to the Contractor.

Draft Regulation 18 ter

The Authority, with the cooperation of States Parties to the Convention, shall ensure, to the extent possible, that no other entities operating in the Contract Area interfere with the rights granted to or operations of the Contractor.

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

- For consistency with the Exploration Regulations (Regulation 24(1)), the Authority should ensure that other entities do not operate in the Contract Area in a manner that interferes with the Contractor.
- We consider that it will be important for the regulations to contain a broader, generic provision regarding the Authority protecting Contractors from interference. Such a provision should not only relate to other Contractors, but also cover matters such as underwater cables and marine scientific research. Given the limits on the Authority's ability to restrict third parties on the high seas, this will also require engagement with and cooperation by relevant member States.
- We have proposed a new Draft Regulation above to reflect this requirement.

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Draft Regulation 18(7)

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7. In relation to exploration activities in the Contract Area conducted under an exploitation contract, the applicable Exploration Regulations shall continue to apply ~~as set out in the relevant [Standards and/or] [Guidelines]~~. In particular, the Contractor shall ~~[be expected to]~~ continue to [show] ~~[exercise]~~ due diligence in conducting exploration activities in the Contract Area, together with ~~[the payment of applicable fees and]~~ the reporting of such activities and its results to the Authority in accordance with the applicable Exploration Regulations, including under regulation 38 (2) (k).

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

- We consider that the reference in Draft Regulation 18(7) to "relevant Standards and/or Guidelines" is unnecessary and may create uncertainty. As such we propose this reference is deleted.
- It is unnecessary to refer to Standards and Guidelines as the Exploration Regulations already set out the applicable regulatory regime that applies to exploration activities, including any Recommendations to guide exploration activities.
- Any exploration done under an exploitation contract should be governed by the same rules, regulations and procedures for exploration. There is no need to create additional instruments, which may create unnecessary confusion and inconsistency.
- Referring to only the Exploration Regulations also provides appropriate flexibility to the Authority to ensure that all exploration regulation is done in a consistent and coherent manner for all Contractors.

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Draft Regulation 18bis

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.

~~{Regulation18 bis~~

~~Obligations of the Contractors.~~

~~1. Contractors shall comply with these Regulations and the Rules of the Authority in a manner consistent with the Convention, the Agreement and the Exploitation Contract.~~

~~[1.bis. A Contractor shall carry out the proposed Plan of Work in accordance with these Regulations, Good Industry Practice, Best Available Scientific Evidence and Best Environmental Practices, using appropriately qualified and adequately supervised personnel.]~~

~~[1.ter. Contractors shall remain current in their implementation of Best Environmental Practices and Good Industry Practices, and shall continually identify and implement solutions that reflect the most up-to-date Best Available Scientific Evidence and Best Available Techniques.]~~

~~2. Contractors, their holding, subsidiary, affiliated and Ultimate Parent companies, agencies and partnerships shall be held liable for the compliance of the Contract. Particularly, they shall be jointly and severally [and strictly] liable for the obligation of compensating damages arising outside of permitted Exploitation Activities.~~

~~3. In the event that Contractors fail to comply with their payment obligations under these Regulations, holdings and Ultimate Parent Companies shall be held responsible to effect such payments to the Authority on behalf of Contractors.~~

~~4. [Sponsor States shall take all legislative and administrative measures to assure that Contractors have all material, operative, and financial means to comply with the Contract and these Regulations and that no corporate limitation shall prevent Contractors, holding and Ultimate Parent Companies to compensate damages and make the payment required by the Contractors under the Contract and these Regulations.]~~

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

- We support the suggestion to delete Draft Regulation 18bis as it is unnecessary, inappropriate and legally problematic.
- The relevant responsibilities that apply to Sponsoring States and Contractors are clear from UNCLOS and the relevant contract.
- It is not necessary to reproduce those rules in these regulations, and thereby impose additional and potentially inconsistent requirements.
- In relation to Draft Regulation 18bis (1), the substance of this paragraph is already reflected in the Standard Clauses for exploitation contracts in Section 3.3(a).
- In relation to Draft Regulation 18bis (1.bis) and (1.ter), these are unnecessary as the Draft Regulations already apply Good Industry Practice, Best Available Scientific Evidence, and Best Environmental Practices to the contractor in the relevant and applicable parts of the regulations.
 - The exploitation contract will also impose relevant obligations concerning these principles and practices upon contractors.
 - As such it would be superfluous and potentially ambiguous to repeat them in this context.
- In relation to Draft Regulation 18bis (2) and (3), while we recognise the importance of ensuring there is an effective liability mechanism in place for exploitation activities, there is no legal basis for the approach proposed.
 - The primary contractual relationship regarding exploitation is between the contractor and the Authority. It is the contractor that remains responsible and liable for its performance under the contract.
 - It is not legally permissible nor appropriate for the Authority to attempt to unilaterally expand the scope of liability under the contract to entities that are not party to that contract.
 - This would also be contrary to basic contractual rules and norms of the legal systems of most member States, which would not allow non-parties to a contract to be bound by the contract's obligations.
 - This approach would also be lopsided insofar as the additional entities would not have any rights under the contract.
- In relation to Draft Regulation 18bis (4), this paragraph inappropriately encroaches upon the sovereign rights of Sponsoring States.
 - It is for each sovereign Sponsoring State to determine the appropriate measures it will take to regulate the contractors it sponsors, consistently with its legal and due diligence obligations under UNCLOS.

- UNCLOS requires Sponsoring States to take necessary and appropriate measures to secure compliance by contractors with their obligations.
- These regulations should not attempt to impose additional and more stringent requirements upon Sponsoring States.

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

Draft Regulation 19/19 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 19

Joint arrangements

1. Contracts may provide for joint arrangements between a Contractor and the Authority through the Enterprise, in the form of joint ventures or production-sharing, as well as any other form of joint arrangement, which shall have the same protection against revision, suspension or termination as contracts with the Authority.

2. The Council shall enable the Enterprise to engage in seabed mining effectively at the same time as the entities referred to in article 153, paragraph 2 (b), of the Convention.

~~**[Regulation 19 Alt**~~

~~**Joint arrangements**~~

~~Before approving any contract with an entity referred to in article 153, paragraph 2(b), of the Convention, the Authority shall adopt Standards and Guidelines:~~

~~(a) providing for joint arrangements between a Contractor and the Enterprise, pursuant to article 11 of Annex III of the Convention; and~~

~~(b) in relation to financial terms, to further the objective of enabling the Enterprise to engage in seabed mining, pursuant to article 13(1)(e) of Annex III of the Convention.]~~

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

- We support retaining the original Draft Regulation 19 and oppose the new Draft Regulation 19 Alt.
- We consider that these regulations should not include unnecessary contingencies and pre-conditions to the Authority's consideration and approval of exploitation contracts.
- Draft Regulation 19 Alt inappropriately pre-conditions the approval of exploitation contracts on the Authority adopting Standards and Guidelines. This is inconsistent with the Council's endorsement of the Commission phased approach to the development of Standards and Guidelines. This would only unnecessarily delay the Authority's work.
- There is no logical or necessary condition between the Authority's approval of an exploitation contract and its work regarding the Enterprise.
- The Enterprise's joint arrangements and financial terms work can be progressed in parallel with the Authority fulfilling its obligations to consider plans of work for exploitation and issue exploitation contracts.

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Draft Regulation 20(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. An application to renew an exploitation contract shall be made in writing addressed to the Secretary-General and shall be made no later than [one year] ~~[two years]~~ before the expiration of the initial period or renewal period, as the case may be, of the exploitation contract.

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

- We support a deadline for applications for renewal of one year prior to the expiration of the initial or renewal period in Draft Regulation 20(2).
- This will ensure the Authority has sufficient time to consider the application for renewal, and also that contractors are able to fully consider and include all the relevant and contemporaneous information regarding the project at the time of applying for renewal.

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Draft Regulation 20(3)/(3 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.

3. The Contractor shall supply such documentation as may be specified in the [Standards and] Guidelines. If the Contractor wishes to make any changes to a Plan of Work and such changes are Material Changes, the contractor shall submit a revised Plan of Work.

~~[3 Alt. The Contractor submitting an application to renew an exploitation contract shall supply a revised plan of work, including an updated EIA, as well as such documentation as may be specified in any applicable Standard and taking account of Guidelines. Submission of a revised Plan of Work for the purposes of this regulation is deemed to be a Material Change for the purposes of regulation 57.]~~

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

- We strongly support the original Draft Regulation 20(3) which took a sensible, pragmatic and appropriate approach to the documentation associated with contract renewal.
- The proposed Draft Regulation 20(3 Alt) would impose unnecessary and burdensome requirements on each and every contract renewal that would be unfair and further burden the Authority's workload to process. It would also be contrary to the current approach to Material Changes under Draft Regulation 57.
- There is no justification for requiring contractors to lodge revised Plans of Work and updated Environmental Impact Assessments (EIAs) for each and every contract renewal.
 - While some renewals may be of such a nature that a contractor may wish to make changes to their Plan of Work, it cannot be assumed that all renewals

will require such changes. For example, a contractor may have just recently updated its Plan of Work in anticipation of seeking renewal. In such circumstances it would not make sense to automatically require them to again revise their Plan of Work.

- It would not be fair or reasonable to require revisions to Plans of Work or EIAs when no material changes are proposed as part of a renewal application. This would also add to the workload and expenses of the Authority in requiring it to review additional, unnecessary documentation.
- The original Draft Regulation 20(3) is also clearer by using the defined term “Material Change” which has a specific scope and is used in the relevant parts of the regulations.
- Not all changes to a Plan of Work will be Material Changes and there is no reason to assume that all renewals to Plans of Work will involve any change to a Plan of Work let alone a Material Change.
- Draft Regulation 57 establishes a process of the Secretary-General to consider whether a revision is a Material Change. The proposed Draft Regulation 20(3 Alt) would usurp this procedure by assuming that all renewals would result in Material Changes.

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Draft Regulation 20(4)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

4. The Commission shall consider such application to renew an exploitation contract ~~at its next meeting within 30 Days~~ after submission of any revised plans or responses by the Contractor pursuant to regulation 11(2) and documentation required under paragraph 3. ~~provided the documentation required under paragraph 3 has been circulated at least [30] [60] Days prior to the commencement of that meeting of the Commission.~~

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

- We consider that there is no need to specify in Draft Regulation 20(4) that the Commission has to wait until its next meeting to consider applications for renewal. This would only invite regulatory delay and be unduly burdensome to both the Contractors and the Commission.
- Instead the Commission should be flexible in the way it operates, including through the use of intersessional working groups and decisions taken under the silence procedure.
- We also support the use of a 30 day period for the provision of relevant documentation. This is consistent with other time periods in the Draft Regulations.

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

Draft Regulation 20(5)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

5. In making its recommendations to the Council under paragraph 6 below, [~~including any proposed amendments to the Plan of Work or revised Plan of Work~~], the Commission shall examine and assess applications in accordance with regulation 13, against the criteria contained in regulation 12, and take account of any report on the review of the Contractor's activities and performance under a Plan of Work under regulation 58, [as well as any other relevant information from, inter alia, performance assessments, annual reports, and environmental reports, ~~legal actions against the contractor~~].

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

- We propose to delete the reference to "legal actions against the contractor" from Draft Regulation 20(5) as it is a very broad concept and could cover a range of irrelevant matters.
- The variety of legal actions that may be brought against a contractor are not a relevant consideration or criteria when considering whether a contract should be renewed. Legal actions can be commenced without merit or relate to a wide variety of issues, including matters unrelated to activities in the Area.
- It would not be efficient or appropriate for the Authority to attempt to examine all potential legal actions that a contractor may have faced when considering a renewal.
- Renewal applications should only be assessed against relevant information and criteria under the regulatory framework.

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Draft Regulation 20(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] ~~[may]~~ recommend to the Council the approval of an application to renew an exploitation contract, and [an exploitation contract shall be renewed by the Council provided that:

(a) The Resource category is recoverable annually in Commercial and Profitable Quantities from the Contract Area;

[...]

~~[(b) bis. The cumulative environmental impact does not exceed the thresholds set by the applicable Regional Environmental Management Plan as a result of the renewal, and that such renewal does not hinder the achievement of the strategic and regional environmental goals and objectives;]~~

[...]

~~[(c) [The Council is satisfied that the requirements of regulation 13 will be met; and]~~

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

- We support the use of "shall" in Draft Regulation 20(6). The Commission is a technical and expert body that should objectively assess applications for renewal against the relevant requirements.

- There is no need to grant the Commission a discretion in relation to its recommendations. If an application meets the requirements, it should be recommended for approval.
- We also note that it will be important for the concept of “Commercial and Profitable Quantities” referred to in Draft Regulation 20(6)(a) to be clearly defined or subject to appropriate guidance, including potentially in a Guideline.
- We consider that Draft Regulation 20(6)(b bis) is unnecessary and propose it be deleted.
 - Absent a Material Change, it is not clear how a mere renewal of a contract could ever result in an individual contractor exceeding the thresholds in the applicable Regional Environmental Management Plan (REMP).
 - We suggest the Authority should be considering cumulative impact as part of its assessment of each new application for Plans of Work not as part of mere renewals. Existing contractors should not be penalized for operations being conducted by new entrants.
 - If there was a Material Change to a Plan of Work associated with a renewal, the Commission will re-examine the applicable environmental thresholds.
 - Further, Draft Regulation 20(6)(b) already requires that the Contractor be in compliance with its exploitation contract and relevant Rules of the Authority. This provides a further measure for ensuring REMF compliance.
- We are concerned that Draft Regulation 20(6)(e) would reopen a significant and lengthy assessment process that is intended to apply to new applicants for exploitation contract.
 - This would be redundant given that contracts being renewed will have already been through the process required under Draft Regulation 13 and also been subject to Authority oversight throughout their term.
 - As such, to improve the efficiency of the Authority and reduce unnecessary burden on Contractors, we propose to delete Draft Regulation 20(6)(e).

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Draft Regulation 20(7)

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7. Each renewal period shall be a maximum of ~~10~~ **[15]** years ~~{for a maximum overall duration of the exploitation contract of 60 years}~~.

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

- We support 15 years as being the maximum period for renewal of contracts, rather than 10 years, in Draft Regulation 20(7).
- We oppose setting a maximum period for any exploitation contract via the regulations. This has no basis in UNCLOS, nor would it be of any benefit to the Authority.
- Article 17(2)(b)(iii) of Annex III of UNCLOS requires that the duration of exploitation should be related to a number of specific factors including the economic life of the project and commercial viability, and also providing the Authority an opportunity to amend a Plan of Work "at the time it considers renewal".
- Setting an arbitrary limit on the duration of all exploitation contracts would not accord with the requirement that the specific factors in Article 17(2)(b)(iii) are taken into account.
- Given the size of some contract areas, considerably more time than 60 years may be needed to properly develop and recover the relevant resources for the benefits of humankind. It would not be logical to force a contractor to abandon a contract without fully realising the benefits from the relevant contract area, particularly after making significant investment in the project.

- Setting a maximum duration at this stage of work would also be premature and hamper potential investment.
- Given the Authority will already have oversight over contracts, and the ability to decide upon contract renewals at regular intervals, the language setting a maximum duration is not needed in Draft Regulation 20(7) and should be deleted.

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

Draft Regulation 20(9)

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~~9. Sponsorship is deemed to continue throughout the renewal period unless the Sponsoring State or States terminates its sponsorship in accordance with regulation 21.~~

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

- Draft Regulation 20(9) is inconsistent with Draft Regulation 20(6)(f), which specifies that a contract can only be renewed if the Sponsoring State has reconfirmed their sponsorship. As such, we propose that Draft Regulation 20(9) be deleted.

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

Draft Regulation 21(1.bis)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

~~1.bis. A Contractor shall promptly notify the Authority if the Contractor's Sponsoring State or States terminates its sponsorship.~~

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

- We propose to delete Draft Regulation 21(1.bis) as it is inconsistent with Draft Regulation 21(2.alt) which specifies that the Sponsoring State is required to notify the Secretary-General if it terminates its sponsorship.
- There is no need to duplicate this notification requirement by also requiring contractors to notify the Secretary-General of the termination of sponsorship.

**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:

President's text

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

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

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

Draft Regulation 21(2.alt), (2.alt.bis), (3), (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.alt ~~[Without prejudice to any terms, rights or obligations between a State and a Contractor under the terms of sponsorship,] if [A] [a]~~ State ~~may~~ terminates its sponsorship ~~of a Contractor it shall promptly by~~ providing to the Secretary-General ~~with~~ a written notice describing the reasons for such termination and the date ~~the~~ termination is to take effect, ~~[no earlier than]~~ taking into account the following timeframes:

(i) ~~Termination due to a Contractor's [material] non-compliance under its terms of sponsorship, [negligence or environmental damage]: termination to take effect [no earlier] [no later than] [6] months after the date of receipt of the notification by the Secretary General;~~

(ii) ~~Termination due to reasons other than those listed in subparagraph (i) above: termination to take effect no [earlier] [later] than 12 months after the date of receipt of the notification by the Secretary General.]~~

[2.alt.bis If the reasons for termination of sponsorship include non-compliance under its terms of sponsorship, ~~[negligence or environmental damage]~~, the Contractor must, ~~if instructed to by the Secretary-General based upon its determination that the reasons for termination justify suspension,~~ suspend its ~~exploitation activities~~ ~~mining operations~~ until the Council has considered the matter in accordance with paragraph 6 below.]

3. In the event of termination of sponsorship, ~~[due to reasons other than those listed in subparagraph 2 (i)]~~ the Contractor ~~may~~, ~~[shall]~~, ~~[within the period referred to in [sub]paragraph 2 (ii)]~~ ~~[before the previous State's sponsorship ends]~~, before the date the termination takes effect as specified in the notification made pursuant to paragraph 2, obtain another Sponsoring State or States in accordance with the requirements of regulation 6, and in particular in order to comply with regulation 6 (1) and (2).

3.bis. Such Any State or States that sponsor a Contractor as contemplated by paragraph 3 shall submit a certificate of sponsorship in accordance with regulation 6.

3.ter. ~~The~~ In the event of termination of sponsorship, an exploitation contract ~~terminates~~ suspends automatically if the Contractor fails to obtain a Sponsoring State or States before the date the termination takes effect as specified in the notification made pursuant to paragraph 2 ~~within the required period~~ [unless the Contractor has sought the Council's consent to transfer its rights and obligations under the exploitation contract pursuant to regulations 23]. Any such suspension of an exploitation contract is lifted once a certificate of sponsorship is submitted in accordance with regulation 6.

[3.bis. In the event that the Contractor is able, within the relevant period, to obtain another Sponsoring State or States in accordance with ~~sub~~-paragraph 3, the Authority shall deal expeditiously with any consents that are required as a result under regulations 23 or 24.]

[...]

6. After a Sponsoring State has given a written notice in accordance with paragraph 2 above, the Council, based on the recommendations of the Commission, which shall take account of the reasons for the termination of sponsorship, ~~[especially in the case of a termination of contract sponsorship that also equates relates to a material breach of compliance] ~~[with the terms of the exploitation contract,]~~ may, pursuant to regulation 103, ~~[shall]~~ require the Contractor to take remedial action or other steps including, where justified under regulation 103, to suspend, ~~[or continue the suspension of,]~~ its mining operations-exploitation activities until such time as ~~[the Contractor has proved to the satisfaction of the Council that the material breach of compliance with of the exploitation contract has been addressed and]~~ a new certificate of sponsorship is submitted.~~

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

- We support the inclusion of **Draft Regulation 21(2.alt)** requiring Sponsoring States to provide written notice to the Secretary-General if they terminate their sponsorship.
- However, we consider that the current drafting would inappropriately impinge upon the sovereign rights of Sponsor States to regulate their relationship with Contractors and set their own internal national laws and regulations.
- We consider that the date of any termination should be up to the Sponsor State to determine, in accordance with its own domestic law and legal arrangements with its

Contractor. There is no need for the Authority to attempt to regulate the timing of the termination.

- Imposing arbitrary time periods around termination in the regulations may also unfairly prejudice Contractors. The appropriate time allowed for termination will depend on a broad range of factors that the Sponsoring State is best placed to determine.
- We are also concerned by the inflexible nature of **Draft Regulation 21(2.alt.bis)**, which automatically requires suspension of operations without proper consideration of the reasons for termination of the sponsorship.
- There may be circumstances where suspension is the appropriate response to termination of sponsorship, however this will not always be the case and there should be proper consideration by the Authority of whether suspension is justified in any particular case.
- As such we propose amendments to Draft Regulation 21(2.alt.bis) to empower the Secretary-General to consider the reasons for termination and decide on whether suspension is justified subject to the Council's consideration of the matter.
- Consistent with our written submission on Draft Regulation 18(1)(b), we also propose replacing "mining operation" with "exploitation activities". We note that sponsorship is required to undertake exploitation activities in the Area. However, "mining operations" may capture a broader range of work than just exploitation. Where a sponsorship is terminated, this should not prevent Contractors from continuing the parts of their business that do not require sponsorship.
- We are also concerned that **Draft Regulation 21(3)** currently deals with several separate issues that would be better dealt with by individual specific paragraphs and have proposed drafting to achieve this.
- First, in paragraph 3, we have made amendments that flow from our proposal in relation to paragraph 2.alt.
- Second, we propose splitting the second sentence of paragraph 3 into a new paragraph 3.bis and made some grammatical changes to this drafting.
- Third, we have moved the third sentence into a new paragraph 3.ter, in which we propose that where a Contractor fails to obtain a new Sponsor State and has not sought to transfer its contract, the original contract should be suspended rather than terminated. This also specifies that the suspension is lifted once the new certificate of sponsorship is submitted.
- This would ensure that the Contractor does not entirely lose its rights and obligations under the contract when it is able to find a new Sponsoring State. It will also simplify the process for recommencing relevant activities in the Area.
- Our proposed paragraph 3.ter will reduce the administrative burden and costs on Contractors, member States, and the Authority. It will also help ensure the continuity of operations in the Area and facilitate care and maintenance of operations while the Contractor seeks other sponsors. It is also consistent with Draft Regulation 21(7), which specifies that Contractors' obligations and liabilities are on-going regardless of the remainder of Draft Regulation 21.

- In relation to **Draft Regulation 21(6)**, we oppose the replacement of “may” with “shall” as the Council should have the ability to properly determine whether suspension is appropriate in the particular circumstances. We also propose clarifying changes of the language used here to make clear the paragraph relates to termination of sponsorship, and that the Authority can take appropriate action where there is a material breach in accordance with Draft Regulation 103.
- Consistent with our written submissions on Draft Regulation 21(2.alt.bis), we also propose to replace “mining operations” with the more specific and consistently used term “exploitation activities”. This paragraph relates to exploitation activities and not the broader operations of Contractors.

**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:

President's text

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

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

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

Draft Regulation 22(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. The Contractor may, ~~[solely for the purpose of raising financing to effect its obligations under an exploitation contract and only with the prior consent of the Sponsoring State or States and of the Council, based on the recommendations of the Commission]~~, mortgage, pledge, lien, charge or otherwise encumber all or part of its interest under an exploitation contract.

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

- We are concerned that the square-bracketed language in Draft Regulation 22(1) would unduly encroach upon the rights of Contractors and propose it be deleted.
- As noted by the President's comments in the text, UNCLOS does not contain any provision specifying or even implying that a Contractor is unable to make use of their contractual rights to raise financing, including by using their contract as a security.
- Establishing and undertaking activities safely and effectively in the Area requires significant investment. The right to undertake exploitation in the Area is one of the significant assets that Contractors have.
- As such, to prevent or hinder Contractors from making use of that asset to arrange funding for their activities would be a significant hindrance on the realisation of the deep seabed mining regime envisaged by UNCLOS.
- It would also be impracticable for the Commission, Council and Sponsoring States to all be involved in relation to every fundraising that every Contractor may embark upon where its contractual rights might be used as a security. This would create a burdensome workload on the Authority.

- We also note that transfers of contractual rights are still governed by a separate regulatory regime under the Draft Regulations. The use of these rights as security would still be subject to that regime where necessary. This provides appropriate and sufficient oversight of any potential changes of rightsholders.

**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:

President's text

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

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

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

Draft Regulation 22(2) 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.

2. ~~[In seeking consent under this regulation,]~~ ~~[a]~~ ~~[A]~~ ~~[The]~~ Contractor shall, ~~[in its annual reports submitted in accordance with regulation 38,~~ disclose to the Council and Commission the terms and conditions of any such encumbrance referred to in paragraph 1 above and its potential impact on the activities under the exploitation contract in the event of any default by the Contractor.

[...]

4. ~~[In giving consent under this regulation,]~~ ~~[the]~~ ~~[The]~~ Council may require that the beneficiary of the encumbrance referred to in paragraph 1 above:

~~(a) Shall subscribe to any internationally adopted standards for the extractive industries which are widely accepted [including environmental and social governance standards, with reference to relevant Standards and Guidelines where relevant]; and~~

~~(b) Shall be properly regulated through a national financial conduct authority in accordance with the Guidelines.~~

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

- Consistent with our written submissions on Draft Regulation 22(1), we oppose the reference to seeking consent in Draft Regulation 22(2) and (4).
- We also propose that the disclosure required in Draft Regulation 22(2) be done via the Contractors' annual reports, which can be reviewed by the Commission during its

review of annual reports. This would minimise the administrative burden on both Contractors and the Authority.

- We also remain concerned that Draft Regulation 22(4) has no legal basis in UNCLOS.
- Paragraph 4 purports to extend the jurisdiction of the Authority to a wide variety of new entities that are not in a contractual or other legal relationship with the Authority.
- UNCLOS establishes a clear system of sponsorship and contracts that creates rights and obligations vis-à-vis Contractors. It does not envisage extending that system to other entities merely due to their financing relationship with Contractors, and it would be inappropriate and ultra vires to attempt to do this via these regulations.

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

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name of Working Group:

President's text

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

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

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

Draft Regulation 24(1)/(1.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.

~~1. For the purposes of this regulation, a "change in control" occurs where there is a change [in 50 per cent or more of] in the ownership of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, [that results in the holding of the beneficial ownership of 50% or more of the Contractor or the controlling interest in the Contractor by an entity that previously held a minority share or had no prior equity interest,] or a change in 50 per cent or more of the ownership of the entity providing an Environmental Performance Guarantee [which by bringing the ownership to 50% constitutes a change in the effective control].~~

1.Alt [For the purposes of this regulation, a "change in control" occurs where there is a change resulting in ownership of 50 percent or more of the Contractor, or of the membership of the joint venture, consortium or partnership, as the case may be, ~~or a change resulting in ownership of 50 percent or more of the entity providing an Environmental Performance Guarantee.~~]

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

- We support the proposed Draft Regulation 24(1.Alt) as a simpler and clearer option for defining "change in control" for this regulation.
- The original Draft Regulation 24(1) was overly complicated and potentially ambiguous. It could have been read as applying even where the controlling entity of a Contractor remained the same, if 50% of the ownership of minority interests in a Contractor changed hands.

- The proposed Draft Regulation 24(1.Alt) establishes a much clearer definition that is straightforward to apply and would capture the correct situations of interest to the Authority.
- We are, however, concerned by the reference in Draft Regulation 24(1.Alt) to a change in ownership of the provider of the Environmental Performance Guarantee.
- The guarantee provider is not a party to the contract nor does it have direct legal relations with the Authority. It is therefore not appropriate for the Authority to try to assert any powers in relation to the guarantor's corporate changes.
- Furthermore, the Contractor may not be in a situation to know every ownership variation in the guarantee provider, which may be any of a number of large institutions or corporate bodies.
- Thus we also propose that the references to "Environmental Performance Guarantee" be deleted throughout Draft Regulation 24.

**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:

President's text

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

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

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

Draft Regulation 24(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. Where there is a change of control of the Contractor, ~~or there is a change of control in any entity providing an Environmental Performance Guarantee on behalf of a Contractor,~~ the Contractor shall, [as soon as reasonably practicable ~~but no later than 24 hours~~], notify the Secretary-General ~~[and the Sponsoring State]~~ in advance of such change of control, [but in any event within 90 Days thereafter] ~~[and in the case of an entity providing an Environmental Performance Guarantee, no later than within 90 Days thereafter]~~. The Contractor shall provide the Secretary-General ~~[and the Sponsoring State]~~ with such details as he or she shall reasonably request of the change of control. ~~[including whether or not the change of control affects the Contractor's nationality or State of effective control, for the purposes of determining the Sponsoring State.]~~

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

- Consistent with our written submissions on Draft Regulation 24(1), we do not consider it appropriate to apply this regulation to guarantors of Environmental Performance Guarantees and have proposed deleting such references throughout Draft Regulation 24.
- This regulation relates to changes in control of Contractors. The guarantor is not a party to the contract, nor does it have direct legal relations with the Authority. It is therefore not appropriate for the Authority to try to assert any powers in relation to the guarantor. Contractors may also not have visibility of all the changes of control that their guarantor may undergo.

- We are also concerned by the proposed encroachment by the Authority into the relationship between the Sponsoring State and Contractor by the insertion of “and the Sponsoring State” into Draft Regulation 24(2).
- It is up to the Sponsoring State and the Contractor to work out how best to structure their relationship, including in relation to notifications. This will be based on any sponsorship agreement and the relevant domestic laws of the Sponsoring State.
- We consider that the regulations should not be overly prescriptive in relation to matters that are best handled by the Sponsoring State itself and that are properly outside of the Authority’s remit.
- We also oppose the insertion at the end of Draft Regulation 24(2) relating to nationality and the State of effective control. “Change of control” as defined in Draft Regulation 24(1) cannot have any effect on the Contractor’s nationality – which relates to where the Contractor is domiciled. The reference to Contractor nationality in Draft Regulation 24(2) is thus inaccurate and confuses how control and nationality operates.

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

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 24(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. After consulting the Contractor ~~or entity providing the Environmental Performance Guarantee, as the case may be,~~ the Secretary-General may:

(a) Determine that, following a change of control of the Contractor ~~or the entity providing the Environmental Performance Guarantee,~~ the Contractor will continue to be able, ~~[and in particular will have the financial capability],~~ to meet its obligations under the exploitation contract or Environmental Performance Guarantee, in which case the contract shall continue to have full force and effect;

~~(b) In the case of a Contractor, treat a change of control as a transfer of rights and obligations in accordance with the requirements of these regulations, in which case regulation 23 shall apply; or~~

~~(c) In the case of an entity providing an Environmental Performance Guarantee, require the Contractor to lodge a new Environmental Performance Guarantee in accordance with regulation 26, within such time frame as the Secretary-General shall stipulate.~~

~~[(d) Confirm with the Sponsoring State whether its sponsorship continues, or require a written notice under regulation 21 bis. where sponsorship has terminated.]~~

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

- We support the President's proposed approach to Draft Regulation 24(3) of retaining references to the Secretary-General rather than replacing these with the Commission.

- As the President notes the tasks under Draft Regulation 24(3) are not technical in nature and are most appropriately done by the Secretary-General. Should the Commission need to be involved in this process, this can occur as contemplated in Draft Regulation 24(4).
- We should refrain from inappropriately inserting more complicated decision-making or review processes into the regulatory framework where they are not needed. This will only overburden the Authority and Contractors.
- We also oppose the inclusion of Draft Regulation 24(3)(b) as this would treat a change of control in a Contractor as the same as a transfer of rights under Draft Regulation 23. These are separate concepts that should not be confused.
- A change of control of a Contractor cannot result in a transfer of rights under a contract. The Contractor will always be the holder of rights under the contract, unless and until it makes use of its right to transfer its rights and obligation.
- Draft Regulation 24(3)(b) should therefore be deleted as it suggests that a mere change in corporate ownership of the Contractor could amend what entities are in a contractual relationship with the Authority, which is not the case.
- Consistent with our written submissions on Draft Regulation 24(1), we do not consider it appropriate to apply this regulation to providers of Environmental Performance Guarantees and propose to delete these references including by deleting sub-paragraph 3(c).
- This regulation relates to changes in control of Contractors. The guarantor is not a party to the contract, nor does it have direct legal relations with the Authority. It is therefore not appropriate for the Authority to try to assert any powers in relation to the guarantor. Contractors may also not have visibility of all the changes of control that their guarantor may undergo.

**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:

President's text

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

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

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

Draft Regulation 24(4)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

4. Where the Secretary-General determines that, following a change of control, a Contractor may not ~~be able~~ have the financial capability to meet its obligations under its exploitation contract, the Secretary-General shall inform the Commission accordingly. The Commission shall submit a report of its findings and recommendations to the Council.

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

- We support limiting Draft Regulation 24(4) to determinations of Contractors' financial capabilities rather than having the Secretary-General engage in a broader assessment of the Contractor's ability to meet its contractual obligations.

**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:

President's text

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

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

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

Draft Regulation 25(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. At least 12 months prior to the proposed commencement of production in a Mining Area, the Contractor shall provide to the Secretary-General a Feasibility Study prepared in accordance with Good Industry Practice, taking into account the [applicable] Guidelines [as well as the results of the test mining study pursuant to Regulation [48bis], paragraph 2 or 3, as applicable, and in accordance with Annex [IV ter]]- [and the Secretary General shall submit this matter to the Commission]. [~~In the light of the Feasibility Study, the Secretary General shall consider whether any Material Change needs to be made to the Plan of Work in accordance with regulation 57(2).~~]. If [the Commission] [~~he or she determines~~] [considers] that any [such] Material Change needs to be made [to the Plan of Work], the Contractor shall prepare and submit to the [Commission] [~~Secretary General~~] a revised Plan of Work accordingly].

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

- We support the current drafting of Draft Regulation 25(1), which correctly has the Commission determine whether a Material Change to the Plan of Work is necessary. The Commission has the appropriate expertise to make this assessment.

**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:

President's text

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

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

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

Draft Regulation 25(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. Where, as part of a revised Plan of Work, the Contractor delivers a revised Environmental Impact Statement, Environmental Management and Monitoring Plan and Closure Plan under paragraph 1 above, regulation 57 (2) shall apply *mutatis mutandis* to such Environmental Plans [if the modification to the Environmental Plans constitutes a Material Change], and such Environmental Plans shall be dealt with in accordance with the procedure set out in regulation 11.

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

- We support the current text of Draft Regulation 25(2), particularly the additional language included in square brackets confirming that the paragraph applies *mutatis mutandis* if a modification to an Environmental Plan constitutes a Material Change.
- This is important to clarify how these regulations will interact and ensure a consistent approach to such changes is taken.

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

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 25(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. Provided that, [where applicable], the procedure under regulation 11 has been completed, the Commission shall, ~~within 30 Days at its next meeting, provided that the documentation has been circulated at least 30 Days before the meeting,~~ examine [the Feasibility Study and] any revised Plan of Work supplied by the Contractor under paragraph 1 above, and in the light of any comments made by members of the Authority, Stakeholders and the Secretary-General on the Environmental Plans.

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

- We consider that there is no reason to constrain consideration of revised Plans of Work to the Commission's twice-yearly meetings in Draft Regulation 25(3). This would only invite regulatory delay and be unduly burdensome to both the Contractors and the Commission.
- Given that the Commission is empowered to consider matters intersessionally, it should make use of this to consider revised Plans of Work as they are submitted.

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:

President's text

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

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

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

Draft Regulation 25(3.bis)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

~~[3.bis. An application to renew an exploitation contract shall be accompanied by updated Environmental Plans to be reviewed in accordance with the provisions of regulation 11.]~~

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

- We do not support the inclusion of Draft Regulation 25(3.bis), particularly in its current form.
- Applications for renewing an exploitation contract, where there is no Material Change, can and should be reviewed under the Contractor's original Environmental Plans. Environmental Plans will have been thoroughly reviewed by the Authority and apply in relation to the same exploitation that is proposed to take place pursuant to the renewed contract.
- A form of Draft Regulation 25(3.bis) would only be reasonable if it applies only when the renewal involves a Material Change on matters covered by the Environmental Plans.

**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:

President's text

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

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

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

Draft Regulation 25(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 Contractor may not commence Commercial production in any part of the Area covered by the Plan of Work until either:

(a) The ~~[Secretary-General]~~ [Commission] ~~Secretary-General~~ has determined that no Material Change to the Plan of Work needs to be made in accordance with regulation 57 (2)-[and this determination has been endorsed by the Council/Commission]; or

(b) In the event that a Material Change is made, the Council has given its approval to the revised Plan of Work pursuant to paragraph 5 above; and the Contractor has lodged an Environmental Performance Guarantee in accordance with regulation 26.

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

- We propose adding "Commercial" before "production" to clarify that the procedure outlined in Draft Regulation 25(6) is a prerequisite for beginning commercial exploitation activities in the Area, not for starting the research or preparatory work necessary for commencing commercial production.
- In relation to Draft Regulation 25(6)(a), we do not support referring determinations on whether a Material Change needs to be made to a Plan of Work to the Council for endorsement.
- The process for making this determination should instead begin with the Secretary-General and then, if necessary, involve endorsement by the Commission.

- The Commission is the Authority's technical body of experts. It, along with the Secretary-General, is best placed and fully capable of making an expert determination on these matters.

**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:

President's text

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

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

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

Draft Regulation 26

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 26

~~[Environmental Performance Guarantee]~~
[Alt. Decommissioning Bond]

1. A Contractor shall lodge ~~[an Environmental Performance Guarantee]~~ [a Decommissioning Bond] in favour of the Authority and no later than the commencement date of Commercial production in the Mining Area.

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

- We support the proposed replacement of the term "Environmental Performance Guarantee" with "Decommissioning Bond" throughout Draft Regulation 26.
- "Decommissioning Bond" more accurately reflects the purpose of the Performance Guarantee and ensures no confusion with the separate term "Environmental Compensation Fund".
- Consistent with our written submissions on Draft Regulation 25(6), we propose adding "Commercial" before "production" in Draft Regulation 26(1) to clarify that the Decommission Bond is required before commercial exploitation activities commence, not ahead of the research or preparatory work necessary for commencing commercial production.

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COUNCIL - PART III**

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

Draft Regulation 26(3)/(3 bis)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

~~3. [The Council shall decide the amount of an [Environmental Performance Guarantee] [Decommissioning Bond] in the Standard taking into account the recommendation of the Commission and Finance Committee.]~~ The amount of an ~~[Environmental Performance Guarantee]~~ [Decommissioning Bond] may be provided by way of instalments over a specified period ~~according to the relevant [Standard and take account of the applicable] Guidelines.~~

~~[3 bis. The [Environmental Performance Bond] [Decommissioning Bond] shall take the form of a letter of credit or surety bond guaranteed by a financial institution with a long term credit rating of AA or better from Fitch Ratings, Moody's or Standard & Poor and meeting the other financial criteria provided for in the Standard.]~~

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

- We support replacing the term "Environmental Performance Guarantee" with "Decommissioning Bond" throughout Draft Regulation 26.
- We also support the option to provide the Decommissioning Bond by way of instalments.
- We support the changes to Draft Regulation 26(3) as we agree with the rationale set out in the President's comments that it is for the Commission to assess the sufficiency of the bond as part of the application process.
- This will also give applicant Contractors appropriate flexibility in terms of the guarantees it can procure and the time period for providing those guarantees.

- We do not support proposed Draft Regulation 26(3 bis), which would be overly prescriptive and artificially constrain the Contractor's financial options in providing and maintaining a Decommissioning Bond.
- Proposed Draft Regulation 26(3 bis) is also inconsistent with the Commission's recommended approach under the phase one standards and guidelines. The current draft Guidelines on the Form and Calculation of an Environmental Performance Guarantee (ISBA/27/C/10) specify that it is for the applicant Contractor to use its discretion to determine the form (or combination of forms) for the Decommissioning Bond as long as it can cover the relevant costs, is independently verified, and is immediately accessible by the Authority. The draft Guidelines also provide a non-exhaustive list of potential forms of Decommissioning Bonds.

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President's text

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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 Regulation 26(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 amount of the ~~[Environmental Performance Guarantee]~~ [Decommissioning Bond] shall be reviewed and updated ~~[every five years annually]~~ by the Contractor]:

(a) Where the Closure Plan is updated in accordance with these regulations; or

(b) As the result of:

(i) A performance assessment under regulation 52;

(ii) A modification of a Plan of Work under regulation 57; or

(iii) A review of activities under a Plan of Work under regulation 58;

[(iv) After consultation with a Contractor, the Authority considers that the likely cost of the activities outlined in (2) have substantially increased;] and

(c) At the time of review by the Commission of a final Closure Plan under regulation 60.

~~[(d) [Inflation and other market or economic conditions impact on the amount of the guarantee that must be held.]~~

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

- We support replacing the term "Environmental Performance Guarantee" with "Decommissioning Bond" throughout Draft Regulation 26.
- We propose that under Draft Regulation 26(4) the Decommissioning Bond amount should only be required to be reviewed and updated every five years. An annual update requirement would be onerous and unnecessary.

- Plans of Works are reviewed every five years and updates to Decommissioning Bonds should follow this same timeline. Updating the Decommissioning Bond more frequently will be neither efficient nor cost-effective.
- We also consider that the original drafting of Draft Regulation 26(4)(b)(iv) would have resulted in a vague and unclear requirement insofar as it required the Authority to determine the costs of the relevant activities.
- As such, we would propose to delete Draft Regulation 26(4)(b)(iv) or at least require consultation with the Contractor to assist the Authority in making such a determination.
- We also oppose the proposed Draft Regulation 26(4)(d) requiring Contractors to evaluate inflation and other market or economic indicators.
- Our proposal at the start of Draft Regulation 26(4) that the review be done every five years will be sufficient to account for any such changes. Any further requirements would create uncertainty and impose vague and ambiguous proof requirements on Contractors.

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COUNCIL - PART III**

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President's text

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

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

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

Draft Regulation 28(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. The Contractor [shall] ~~[will make best efforts to]~~ maintain Commercial Production in accordance with the exploitation contract and the Plan of Work annexed thereto and these regulations, ~~[and market conditions]~~. A Contractor shall, consistent with Good Industry Practice, manage the recovery of the Minerals removed from the Mining Area at rates contemplated in the Feasibility Study.

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

- We support the use of "shall" in Draft Regulation 28(1), which confirms the Contractor's duty to maintain Commercial Production as envisioned by UNCLOS.
- We propose deleting the term "best efforts", as it is not defined and is not consistent with UNCLOS's requirement in Annex III, Article 17(2)(c) that "[o]nce commercial production is achieved, the Authority shall within reasonable limits and taking into consideration all relevant factors require the operator to maintain commercial production throughout the period of the plan of work."

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COUNCIL - PART III**

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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 Regulation 28(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 notify the Secretary-General ~~[and the Sponsoring State or States]~~ if it:

- (a) Fails to comply with the Plan of Work; or
- (b) Determines that it will not be able to adhere to the Plan of Work in future.]

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

- Consistent with our written submissions on Draft Regulation 24(2), we are concerned by the encroachment by the Authority into the relationship between the Sponsoring State and Contractor by inserting "and the Sponsoring State or States" into Draft Regulation 28(2).
- It is up to the Sponsoring State and the Contractor to work out how best to structure their relationship, including in relation to notifications. This will be based on any sponsorship agreement and the relevant domestic laws of the Sponsoring State.
- We consider that the regulations should not be overly prescriptive in relation to matters that are best handled by the Sponsoring State itself and that are properly outside of the Authority's remit.

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

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

Draft Regulation 28(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. Notwithstanding paragraph 1 above, the Contractor shall [temporarily] [immediately] [reduce or] suspend production whenever such reduction or suspension is required to protect the Marine Environment from [Serious Harm or a threat of Serious Harm] or to protect human health and safety [to protect the Marine Environment from Serious Harm or a threat of Serious Harm, to protect human health and safety or to protect human remains, objects or sites of archaeological or historical nature] [upon the receipt of emergency order pursuant to regulation 4(4) or on the Contractor's own decision that maintaining the level of production would result in Serious Harm or a threat of Serious Harm.] A Contractor shall notify the Secretary-General [and the Sponsoring State or States] of such a reduction or suspension of production as soon as is practicable and no later than [72] [24]-hours after production is [reduced or] suspended.

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

- We support the square-bracketed references to "Serious Harm or a threat of Serious Harm" as it is important to consistently link protection of the Marine Environment to this standard, which is used throughout Part XI of UNCLOS.
- This fulfils UNCLOS's environmental protection obligations and reflects the reality of commercial operations in the Area.
- Consistent with our written submissions on Draft Regulation 24(2), we are concerned by the encroachment by the Authority into the relationship between the Sponsoring State and Contractor by inserting "and the Sponsoring State or States" into Draft Regulation 28(3).

- It is up to the Sponsoring State and the Contractor to work out how best to structure their relationship, including in relation to notifications. This will be based on any sponsorship agreement and the relevant domestic laws of the Sponsoring State.
- We consider that the regulations should not be overly prescriptive in relation to matters that are best handled by the Sponsoring State itself and that are properly outside of the Authority's remit.

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
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President's text

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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 Regulation 28(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. [A Contractor shall notify the Secretary-General as soon as it recommences any [Commercial Production mining activities](#), and no later than 72 hours after such recommencement, and, where necessary, shall provide to the Secretary-General such information as is necessary to demonstrate that the issue triggering a reduction ~~or~~ ~~suspension~~ has been addressed. The Secretary-General shall notify the Council that production has recommenced.]

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

- We propose to replace "any mining activities" with "Commercial Production" to ensure this notification requirement is only triggered when the Contractor recommences commercial production and not simply when it commences preparatory and other work in the Area.

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COUNCIL - PART III**

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President's text

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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 Regulation 29(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. Notwithstanding regulation 28, a Contractor may temporarily reduce or suspend production due to market conditions [or other factors] but shall notify the Secretary-General thereof [as soon as practicable thereafter] [~~no later than one month from the date of the reduction or suspension~~]. Such reduction or suspension may be for a period of up to 12 months.

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

- We support the addition of "or other factors" and "as soon as practicable thereafter" into Draft Regulation 29(1) as this will allow Contractors appropriate flexibility in making suspension determinations and informing the relevant authorities.

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COUNCIL - PART III**

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

Draft Regulation 29(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. If the Contractor proposes to continue the reduction or suspension for more than 12 months, the Contractor shall notify the Secretary-General in writing, at least 30 Days prior to the end of the 12-month period, giving its reasons for seeking a further reduction or suspension of that length of time. [If business practices are suspended due to global economic conditions or force majeure, the contractor shall be allowed to maintain a longer suspension,] The Commission shall, upon determining that the reasons for the reduction or suspension are reasonable, including where the prevailing economic conditions make Commercial Production impracticable, [of for other circumstances beyond the Contractor's control] ~~recommend approval of the suspension to the Council. The Council shall, based on the recommendation of the Commission, [consider] [decide on]~~ the reduction or suspension requested by the Contractor. ~~The Contractor may apply for more than one suspension. [During the period when the Contractor reduces or suspends production, the annual fixed fee or royalties paid by the Contractor shall be exempted or deducted appropriately].~~

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

- We support Draft Regulation 29(2) and its recognition that the Commission should take account of circumstances that are beyond the control of Contractors when considering suspension and reduction requests.
- We do not consider, though, that the Council needs to be involved in the decision-making process regarding requests for reductions or suspension in production. This is an entirely technical decision-making process that the Commission is competent to handle itself.

- We also oppose the new proposed final sentence of Draft Regulation 29(2) as it is unnecessary. The annual fixed fee will continue to be paid regardless of whether the Contractor reduces or suspends production, while the level of any royalties paid will be reduced by virtue of their link to the production levels.
- We do not consider that additional language is needed to re-affirm this clear result of a suspension or reduction in production.

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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 Regulation 29(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 the event of any suspension in mining activities, the Contractor shall continue to monitor and manage the Mining Area in accordance with the Closure Plan. [Where suspension continues for a period of more than 12 months, the Commission may require the Contractor to submit a final Closure Plan in accordance with regulation 60.] Where the Contractor elects to suspends all production for [more than] five [consecutive] years, the Council may suspend ~~terminate~~ the exploitation contract [following consultation with the Contractor,] and the Contractor may ~~shall~~ be required to implement the final Closure Plan.

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

- We support the changes to Draft Regulation 29(3), particularly the requirement for the Council to consult with the Contractor if production is suspended in the Mining Area for more than five consecutive years and the Council determines to suspend or terminate the contract.
- However, we propose that the Council should be able to "suspend" rather than "terminate" the exploitation contract. The Contractor would thus retain rights in the Mining Area and could more easily recommence commercial production when appropriate.
- This would avoid the need for a costly and time-consuming recommencement of the application process if commercial production becomes commercially viable again.

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President's text

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

Draft Regulation 29 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.

~~1. In pursuance of regulation 2(2)(a) relating to the efficient conduct of activities, and the avoidance of unnecessary waste, and to ensure that the resources are being mined optimally in accordance with the Mining Work Plan, a Contractor shall, in accordance with Best Industry Practices:~~

~~(a) Avoid inefficient mining practices;~~

~~(b) Minimize the generation of waste in the conduct of exploitation in the Area~~

~~2. A Contractor shall include in its annual report under Regulation 40 such information and Reports as the Secretary General requests, in accordance with the Standards and Guidelines, to demonstrate that the Contractor is meeting the obligations in paragraph 1 above.~~

~~3. If the Secretary General becomes aware that Contractor is not meeting the obligations in paragraph 1 above, by way of written notice to the Contractor, request a review of mining and processing activities carried out under the Plan of Work. The Contractor shall implement any modifications to bring the Mining Workplan and any mining and processing practice into conformity with Best Industry Practices.~~

~~4. Members of the Authority shall, to the best of their abilities, assist the Secretary General through the provision of Data and information in connection with this regulation where processing, treatment and refining of ore from seabed mining occur under their jurisdiction and/or control.]~~

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

- While we recognise and support the policy intention behind proposed Draft Regulation 29 Alt, and the importance of Contractors avoiding inefficiencies and waste, this text is not appropriate for inclusion in the regulations.
- Proposed Draft Regulation 29 Alt regulates the kind of matters that are best dealt with through instruments such as Guidelines on good industry practice.
- We are particularly concerned that the obligation in Draft Regulation 29 Alt (1) would be vague and difficult to enforce. It could involve the Authority attempting to second-guess matters related to commercial operations and decision-making. Including Draft Regulation 29 Alt (1) would create significant uncertainty for Contractors as to what is required of them and what they need to do to comply.
- Draft Regulation 29 Alt (4) also appears to contemplate consideration of operations that are outside of the Area. This would be inappropriate and improperly extend the jurisdiction of the Authority to matters that are the purely within the remit of sovereign States. The scope of the Authority's jurisdiction is limited by UNCLOS and to try and enlarge that jurisdiction via regulations would be ultra vires.

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 30(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 ensure ~~[via periodic assessment by an independent entity as may be required]~~ compliance with the applicable international rules and standards established by competent international organizations ~~-or general diplomatic conferences concerning the safety of life at sea,~~ the pollution of the Marine Environment by vessels, the prevention of collisions at sea, [the training of seafarers,] [maritime labour conditions, ~~as adopted by the Maritime Labour Convention~~] and the treatment of crew members, as well as [any] rules, regulations and procedures ~~[and Standards adopted from time to time by the Council relating to]~~ [of the Authority on] these matters.

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

- We support the reference in Draft Regulation 30(2) to "applicable international rules and standards established by competent international organizations", as this formulation provides an appropriate degree of flexibility to the Contractor when assessing and understanding its compliance obligations.
- We propose removing the references to "general diplomatic conferences concerning the safety of life at sea" and the "Maritime Labour Convention". The reference to "general diplomatic conferences" is vague and lacks definition. We would also not want to limit the scope of relevant maritime labour conditions solely to those adopted by the Maritime Labour Convention.
- These specific references are not also needed given the earlier reference to "international rules and standards established by competent international organizations".

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 31(1)/(Alt.1), (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.

[1. Contractors shall, [consistent with the] relevant Guidelines, carry out [exploration and](#) exploitation [activities](#) under an exploitation contract with reasonable regard for other activities [\[and structure\]](#) in the Marine Environment, ~~[including but not limited to submarine cables and pipelines in the Contract Area, fishing activities and other activities]~~, in accordance with article[s] [87 and] 147 of the Convention and the approved Environmental Management and Monitoring Plan, [Regional Environmental Management Plan] and Closure Plan. ~~[and any applicable international rules and standards established by competent international organizations]~~

~~Alt. 1. [Contractors shall, consistent with the [Standards and taking into account the] relevant Guidelines, carry out Exploitation under an exploitation contract with reasonable regard for other activities in the Marine Environment in accordance with article 147 of the Convention and the [and structures] approved Environmental Management and Monitoring] Plan [of Work, the applicable Regional Environmental Management] [and Closure] Plan and any applicable international rules and standards established by competent international organizations, and relevant national laws and regulations of Sponsoring States and flag States.]~~

[...]

2. Alt. [To further the due and reasonable regard obligations in Articles 87 and 147 of the Convention, the [Secretary-General Authority](#), in conjunction with member States, shall facilitate early-stage coordination between the Contractors and the proponents of the other activities in the marine environment].

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

- We support the original Draft Regulation 31(1) and consider it the simplest and most straightforward statement of the Contractor's obligations.
- We propose adding the term "exploration" to Draft Regulation 31(1) to ensure it also applies to any exploration activities that are carried out under an exploitation contract.
- We note that pipeline and cable operators with existing infrastructure in the areas a Contractor operates should also have a responsibility to inform the Contractor where that infrastructure is located and that member States should facilitate this as part of the coordination contemplated by Draft Regulation 31(2.Alt). We would understand Draft Regulation 31(1) in that context.
- We support Draft Regulation 31(2. Alt) as early-stage coordination is more likely to get better engagement from all stakeholders if facilitated by the Authority or its subsidiary bodies.
- We propose replacing the Authority with the Secretary-General in Draft Regulation 31(2.Alt) for clarity regarding how the Authority will be involved. The Secretary-General is best placed to assist with coordination and ensure proper dialogue with relevant stakeholders.

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President's text

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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 Regulation 32(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. A Contractor shall reduce the risk of Incidents as much as reasonably practicable, to the point where the cost of further risk reduction would be ~~grossly~~ disproportionate to the benefits of such reduction, [in accordance with any relevant Standards and] taking into account the ~~[relevant]/[applicable]~~ Guidelines.

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

- We propose removing the term "grossly" from Draft Regulation 32(1), as it is inconsistent with the "reasonably practicable" standard that the regulation is intended to implement.
- In accordance with the reasonably practicable standard, Contractors should be required to reduce risks to the point where the costs of further risk reduction would be disproportionate to the benefits, with no further qualifier added.

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

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 33(2)(a).Alt and (3)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

2. The Contractor shall, upon becoming aware of an Incident:

[...]

[(a).Alt. Notify its Sponsoring State or States, ~~[relevant adjacent Coastal States]~~
[States adjacent to the contract area likely to be affected] and the Secretary-General immediately, as soon as reasonably practicable but no later than 24 hours from the time the incident occurred;]

[...]

(c) Undertake promptly, and within such time frame as stipulated, any instructions received from the Secretary-General in consultation with the Sponsoring State or States, flag State, ~~coastal State~~States adjacent to the contract area likely to be affected or relevant international organizations, as the case may be;

[...]

[(f) Following resolution of an Incident, provide the Authority with an Incident report which details the Incident and any corresponding data on its nature, scale, and impacts, the Contractor's response, and lessons learned.]

3. The Secretary-General shall **[promptly]** report any Contractor that fails to comply with this regulation to its Sponsoring State or States, [States adjacent to the contract area that were likely to be affected by the Incident] and the flag State of any vessel

involved in the Incident for consideration of the institution of legal proceedings under national law.

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

- We support Draft Regulation 33(2)(a).Alt as amended on the understanding the amendment does not substantively change the obligation.
- We also understand that this sub-paragraph allows the Contractor to make a determination of which of the States adjacent to the contract area are likely to be affected.
- We also propose amending Draft Regulation 33(2)(c) and 33(3) to be consistent with the language used in Draft Regulation 33(2)(a).Alt regarding States adjacent to the contract area.

**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:

President's text

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

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

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

Draft Regulation 33(4)/(Alt.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 Secretary-General shall report such Incidents and measures taken to the Commission and the Council at their next available meeting.

~~[Alt.4. The Secretary General shall~~

~~(a) before issuing instructions under this regulation, request instruction from the [Compliance Committee/Council], and consult with the Sponsoring State or State, and other relevant State or international organisations, insofar as it is feasible to do so taking account of the urgency in the situation;~~

~~(b) follow any relevant Standards and Guidelines on the issue of instructions under this regulations;~~

~~(c) report such Incidents and measures taken to the Commission and the Council at their next available meeting.]~~

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

- We consider that the proposed Draft Regulation 33(Alt.4) would be onerous, overly prescriptive and unnecessary for the purposes of these regulations.
- The Secretary-General should be left to evaluate and respond to reported Incidents in its normal course of business without having each step of its actions dictated by the regulations.

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

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President's text

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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 Regulation 33(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 Secretary-General shall publish copies of Incident reports at the Authority's website, subject to ensuring that confidential information is protected.]

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

- We have proposed amendments to Draft Regulation 33(5) to ensure that confidential information in Incident reports is removed and protected prior to reports being published online by the Authority.

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

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 34(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. A Contractor shall immediately notify its Sponsoring State or States, [States adjacent to the contract area that are likely to be affected] ~~[other relevant stakeholders]~~ and the Secretary-General of the ~~[happening]~~ [occurrence] of any of the [Notifiable] Events listed in appendix I to these regulations.

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

- We oppose a broad and vague requirement that Contractors notify "other relevant stakeholders" under Draft Regulation 34(1). This would lack precision in an important obligation regarding notification that should set clear requirements in relation to what Contractors are obliged to do.
- It also should be the Authority's responsibility to notify relevant stakeholders and other member States (apart from the Sponsoring State/s) should a Notifiable Event occur.
- We also propose amending Draft Regulation 34(1) to be consistent with the language used in Draft Regulation 33(2)(a). Alt regarding States adjacent to the contract area.

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

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 34(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 receipt of notification under paragraph (2), ~~t~~he Secretary-General shall consult with the Sponsoring State or States, States adjacent to the contract area that are likely to be affected, and other regulatory authorities as necessary, ~~and shall seek the instructions of the Compliance Committee/Council.~~

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

- We propose amending Draft Regulation 34(3) to be consistent with the language used in Draft Regulation 33(2)(a). Alt regarding States adjacent to the contract area.
- We also do not consider it necessary for the Secretary-General to seek the instructions of the Compliance Committee or Council in relation to Notifiable Events. Such a process would be time-consuming and hamper the Secretary-General's ability to respond efficiently and quickly to such events.
- Instead, consultation with Sponsoring States and relevant States adjacent to the contract area would be sufficient, with other regulatory bodies being engaged as necessary and if required.

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COUNCIL - PART III**

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 35

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.

The Contractor shall ~~[immediately]~~ notify the Secretary-General in writing as soon as reasonably practicable within 24 hours of any finding in the Contract Area of any human remains of an archaeological or historical ~~[and paleontological]~~ nature, or any object or site of a similar nature, and its location, including the preservation and protection measures taken. The Secretary-General shall transmit such information as soon as reasonably practicable, [within 7 Days of receiving it] to the ~~S~~sponsoring State [or States], to the State from which the remains, [object or site] originated, if known, to the Director General of the United Nations Educational, Scientific and Cultural Organization and to any other competent international organization. ~~[Following the finding of any such]~~ [Such] human remains, object or site in the Contract Area [should be disposed of for the benefit of mankind as a whole or preserved, so that] [and in order to avoid disturbing such human remains, object or site,] no further Exploration or Exploitation shall take place, within a reasonable radius, [to be determined by the Authority [in consultation with the Contractor] [until such time as the Council decides otherwise], after taking into account the views of the State from which the remains [or objects] originated. ~~[, the Director General of the United Nations Educational, Scientific and Cultural Organization or any other competent international organization. [If the Council decides that exploration or exploitation cannot continue, the Contractor shall be compensated, including but not limited to the vicarious areas of equivalent size or value elsewhere or appropriate waiver of fees.]~~

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

- We consider that 24 hours is too short a timeframe for a Contractor to prepare a notification to the Secretary-General under Draft Regulation 35. There is also no necessary urgency in relation to these notification and so it would be unreasonable to impose so short a time period on Contractors. As such we propose to amend this timeframe to be “as soon as reasonably practicable”.
- The Secretary-General should also not be held to a specific timeframe in relation to transmitting the information to Sponsoring States and others. We propose to amend this to also be only “as soon as reasonably practicable” to give the Secretary-General appropriate flexibility in relation to the notification process.
- We also propose removing “paleontological” from Draft Regulation 35 as this is phrase is not used or defined in UNCLOS. Article 149 of UNCLOS establishes an obligation in relation to archaeological and historical objects. It would not be consistent with UNCLOS to insert additional requirements via the regulations of this nature.

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COUNCIL - PART III**

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President's text

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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 Regulation 36(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. A Contractor shall obtain and thereafter at all times maintain, and cause its subcontractors to obtain and maintain, in full force and effect, insurance with financially sound insurers satisfactory to the Authority, of such types, on such terms and in such amounts in accordance with [the relevant Standards and Guidelines] ~~[applicable international maritime practice, consistent with Good Industry Practice and as specified in the relevant Guidelines].~~

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

- We support Draft Regulation 36(1) in its revised form and the use of Standards and Guidelines to set the necessary detail regarding insurance requirements.

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COUNCIL - PART III**

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 37(4)/(4.Alt.1)/(4.Alt.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.

~~4. [In the case of specific training on Mitigation and the prevention of pollution from the Area, participation of representative of the adjacent coastal State should be ensured.]~~

~~4. Alt 1 [The Training Plan presented by the Contractor must contain proposals of at-sea training as well as capacity building in other areas of relevance such as: Environmental Management, International Law (with a focus on the Convention and the Mining Code, Modeling, Statistics and Marine Spatial Planning.)4.~~

~~Alt 2 [The Training Plan presented by the Contractor must contain proposals of at-sea training as well as capacity building in other areas of relevance such as: Environmental Management, International Law (with a focus on the Convention and the Mining Code, Modeling, Statistics and Marine Spatial Planning.)~~

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

- We support the President's proposed deletion of the alternatives to Draft Regulation 37(4) as they are inconsistent with UNCLOS or relate to matters that are better dealt with in Standards or Guidelines.
- We also propose to delete Draft Regulation 37(4) itself as it is too prescriptive and goes beyond matters that are appropriate for regulations.
- Procedures for training, including regarding participation by representatives of adjacent coastal States, should be covered by the relevant training plan or Guidelines. This will ensure the participation is appropriate for the circumstances and enable the regulations to remain flexible and fit-for-purpose rather than prescribing an inappropriate level of detail for these matters.

**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:

President's text

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

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

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

Draft Regulation 40(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 acknowledges and agrees that it is subject to the anti-bribery and anti-corruption provisions of the jurisdictions in which the Contractor is a national or by whose nationals it is effectively controlled [~~or of the jurisdiction in which the Contractor is organized or conducts business,~~] and shall conduct its activities under the exploitation contract in accordance with its obligations under such anti-bribery and anti-corruption laws, [~~including in accordance with the OECD Recommendation on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises~~] including in accordance with the OECD Recommendation on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises.

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

- We propose that Draft Regulation 40(2) should retain its references to the OECD Recommendation on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises. The OECD Recommendation represents international best practice on anti-corruption procedures and protections in the context of State-Owned Enterprises and would offer helpful guidance to the Contractor in organising its activities.

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COUNCIL - PART III**

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 41(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. [If the contractor presents an interest in] [T] [t]he exploration for and exploitation of such finds must be the subject of a separate application to the Authority, in accordance with the relevant Rules of the Authority.~~

[2.Alt. The exploration for and exploitation of resources referred to in paragraph 1 of this Regulation shall be the subject of a separate application to the Authority.]

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

- We prefer the alternative paragraph 2.Alt for Draft Regulation 41 as it maintains the appropriate separation between the resources covered by the exploitation contract and other resources that may be found in the contract area.

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COUNCIL - PART III**

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1. Name of Working Group:

President's text

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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 Regulation 43(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. Nothing in an exploitation contract shall relieve a Contractor from its lawful obligations under any national law to which it is subject, including the laws of a Sponsoring State and flag State. ~~[Contractors shall comply with all laws and regulations, whether domestic, international, or other, that apply to its conduct of activities in the Area.]~~

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

- We propose to remove the language in Draft Regulation 43(1) regarding compliance with all laws and regulations. This language is duplicative of the proceeding sentence and too general to impose any additional specific obligations.

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COUNCIL - PART III**

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 94(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. The Commission shall, taking into account the views of [recognized experts,] [recognized experts identified in accordance with annex X], Stakeholders and relevant existing internationally accepted standards [where applicable](#), make recommendations to the Council on the adoption and revision of Standards relating to Exploitation activities in the Area, including standards relating to [inter alia]:

(a) Operational safety;

[(a).Alt. The effective protection of human health and safety, and labour matters;]

(b) The conservation [and Exploitation] of the Resources; and

(c) The protection of the Marine Environment, including standards or requirements relating to the Environmental Effects of Exploitation activities, as referred to in regulation 45.

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

- We support Draft Regulation 94(1) but propose adding in the phrase "where applicable" to recognise that there may be circumstances in which the Commission does not need to consult relevant experts as it has the required expertise to make the decision without additional input.

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COUNCIL - PART III**

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President's text

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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 Regulation 94(1.ter), (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.ter. Standards shall describe and determine how the Authority and Contractors shall implement these regulations, and shall aim for:

(a) a uniform and non-discriminatory operating environment for all Contractors;

(b) a consistent approach by all parties to reduce environmental impacts and human health and safety risks to as low as reasonably practicable;

(c) an outcomes-based approach to regulation, which prescribes rigorous environmental outcomes while affording flexibility for the processes by which these outcomes are achieved to enable continuous improvement, particularly as technology advances.]

2. The Council shall consider and approve, upon the recommendation of the Commission [and taking into account statements submitted by Stakeholders during a public consultation,] the Standards, provided that such Standards are consistent with the intent and purpose of the Rules of the Authority [and] [including] [the decisions of the Council and the Assembly [and, to the extent relevant, developed on the basis of Best Available Scientific Evidence, Best Environmental Practices, Best Available Techniques, and Good Industry Practice]. If the Council does not approve such Standards, the Council shall return the Standards to the Commission for reconsideration in the light of the views expressed by the Council. [The Standards approved by the Council shall remain effective on a provisional basis until approved by the Assembly or until amended by the Council in the light of any views expressed by the assembly].

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

- We support the proposed Draft Regulation 94(1.ter) and welcome the reference to “an outcomes-based approach” to regulation in sub-paragraph (c).
- We also propose adding in “and determine” to emphasise that Standards do more than just describe regulatory implementation and also control the process.
- We also support Draft Regulation 94(2) as amended. In particular, we support that the Council be required to return Standards that it does not approve to the Commission for its reconsideration and amendment.

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COUNCIL - PART III**

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President's text

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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 Regulation 94(3), (4.bis), (4.ter), (5.bis)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

3. [The Standards contemplated in paragraph 1 above [may] ~~[must]~~ include both qualitative and quantitative standards, [if applicable], and must include all the methods, processes and technology required to implement the Standards.]

[...]

[4.bis. Standards adopted or revised may incorporate an appropriate transition period for implementation by existing Contractors.]

~~[4.ter. For the avoidance of doubt, compliance with Standards is a fundamental term of the contract, for the purposes of regulation 103.]~~

[...]

[5.bis. To the extent of any inconsistency between a Standard and amendments thereto, and an already approved Plan of Work, a Contractor following a reasonable transition period, shall use its best efforts to comply with any additional changes to its Plan of Work as a result of the amendment.]

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

- We propose using "may" not "must" in Draft Regulation 94(3) given that not all Standards will require qualitative and quantitative approaches. We also support the insertion of "if applicable" to ensure appropriate flexibility for the Standards.
- We support the proposed Draft Regulation 94(4.bis) which will promote best regulatory practice by allowing for transitional periods for the implementation of

Standards. This will allow Contractors sufficient time to adapt to and implement new Standards, helping to promote compliance and improve regulatory outcomes.

- We also propose deleting Draft Regulation 94(4.ter) as it is duplicative and unnecessary. There is no need to reiterate every aspect of the contract in the regulations. Instead we should be aiming to keep the regulations as streamlined and flexible as possible.
- We also support proposed Draft Regulation 94(5.bis) which would provide clarity regarding how new and amended Standards will apply to Contractors with existing Plans of Work.

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COUNCIL - PART III**

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1. Name of Working Group:

President's text

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

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

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

Draft Regulation 95(1.alt), (1.alt bis), (2) and (3)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

[1. alt. The Commission ~~for other subsidiary organs of the Authority where so requested by the Council,~~ shall, from time to time, develop Guidelines of a technical nature, ~~for the guidance of Contractors~~ in order to assist in the implementation of these Regulations, taking into account the views of relevant Stakeholders.

1. alt bis. The Secretary-General shall, from time to time, develop Guidelines of an administrative nature, ~~in order to assist in the implementation of these Regulations,~~ taking into account ~~instructions from the Council and~~ the views of the Commission as well as other relevant Stakeholders]

2. The full text of such Guidelines shall be ~~reported~~ ~~recommended~~ to the Council ~~for adoption~~. ~~[In case of Guidelines which are not of a predominantly administrative nature,] [t][T]he Council shall take into account statements submitted by Stakeholders during public consultation~~. Should the Council find that a Guideline is inconsistent with the intent and purpose of the Rules of the Authority, it may ~~direct~~ ~~request~~ that the G guideline be modified by ~~the Commission~~ [or withdrawn]. ~~[Where no such [direction] [request] is made the Council shall approve the Guidelines]~~.

3. The Commission ~~for other subsidiary organ,~~ [in the case of technical Guidelines] and the Secretary-General, [in the case of administrative Guidelines] shall keep under review such Guidelines [which shall be reconsidered, and revised ~~subject to Council approval~~ as needed, at least every five years from the date of their adoption or revision, and] in the light of improved knowledge or information.

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

- We support Draft Regulation 94(1.alt) and (1.alt bis), however consider that the Commission should have the central responsibility for developing technical Guidelines.
- The Commission has the expertise and competence to handle the development of Guidelines and is best placed to consider questions of a technical nature. Thus there is no need for allowing the Council to instruct other subsidiary organs to develop Guidelines.
- We consider that Draft Regulation 95(2) should specify that the full text of the Guidelines is reported rather than recommended to the Council. The Council does not adopt Guidelines and therefore is not in a position to act on a recommendation regarding Guidelines from the Commission.
- We also propose to add in “by the Commission” to Draft Regulation 95(2) to emphasise that it is the Commission, not the Council, that has the authority to modify or withdraw a Guideline.
- We propose to remove the phrase “subject to Council approval” from Draft Regulation 95(3), as reviewing, reconsidering and revising Guidelines should not require the Council’s approval.

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COUNCIL - PART III**

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1. Name of Working Group:

President's text

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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.

Annex I, Section I, paragraph 15.bis/15.ter

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.

[15.bis Provide information about relevant national laws and administrative measures that would apply to the applicant in its conduct of Activities in the Area, including on compensation mechanisms in respect of damage caused by pollution of the marine environment.]

[15.ter A description of the Contractors and the Sponsoring States (or States) compliance enforcement strategies, and how these align with the Rules of the Authority.]

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

- We propose to delete paragraph 15.ter from Section I of Annex I as it is unclear and unnecessary. Paragraph 15.ter is unclear as there is no definition of what a "compliance enforcement strategy" entails. It is also unnecessary as paragraph 15.bis already captures the domestic regulatory requirements that will apply to applicants.

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

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1. Name of Working Group:

President's text

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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.

Annex I, Section III, paragraph 20.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.

20.bis. [\[To the extent possible and with the assistance of the Secretariat in obtaining relevant information and agreement from member States and other relevant entities pursuant to regulation 31\(2\):](#)

[\(a\)](#) Identify the in-service and planned submarine cables and pipelines in, or adjacent to, the area under application [\(to the extent such information is publicly available\)](#); and

[\(b\)](#) provide documentary proof of the measures agreed between the applicant and the operators of the [identified](#) cables and pipelines to reduce the risk of damage to the in-service and planned submarine cables and pipelines, [or that the applicant will undertake in the absence of an agreement](#)].

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

- We are concerned that paragraph 20.bis of Section III of Annex I may not be able to be complied with by applicants without the assistance of relevant States Parties and other owners of subsea cables and pipelines. We have proposed a number of amendments to the paragraph to ensure it is possible for it to be implemented.
- First, we propose making the paragraph subject to the Secretariat assisting applicants to obtain the required information from member States and relevant entities. This can be done pursuant to Draft Regulation 31(2) which requires the Authority and member States to "take measures to ensure that other activities in the Marine Environment [are]... conducted with reasonable regard for the activities of

Contractors in the Area.” We also propose language that moderates paragraph 20.bis so that it only applies “to the extent possible”.

- Second, we propose to limit the requirement to identify cables and pipelines to information that is publicly available. This will ensure compliance with this obligation will not be impacted by confidentiality arrangements that may apply.
- Third, we propose that the Secretariat should assist applicants to obtain cable and pipeline operators’ agreement to the measures the applicant will put in place to reduce damage. We further propose that where such agreement cannot be reached (which may be due to no fault on the part of the applicant), the regulation require the applicant to specify what measures it will take to guard against the relevant risks.

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COUNCIL - PART III**

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1. Name of Working Group:

President's text

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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.

Annex I, Section IV, paragraph 21

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.

21. Attach such information, in accordance with the [Standards and] Guidelines, [as applicable], [to enable the Council to determine] [to assist the Authority in determining] whether the applicant has [or will have] access to the financial resources to carry out the proposed Plan of Work and fulfil its financial obligations to the Authority, as follows:

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

- We support the insertion of "or will have" into paragraph 21 of Section IV of Annex I. This will capture situations where financial resources may be contingent on, e.g., approval of an applicant's Plan of Work.
- This is also consistent with Draft Regulation 13(1)(e), which refers to each applicant being able to demonstrate that they "will have" the financial and technical capabilities to carry out their Plan of Work and meet its contractual obligations.

**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:

President's text

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 I, Section IV, paragraph 22

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.

22. If, subject to regulation 22, an applicant seeking approval of a Plan of Work intends to finance the proposed Plan of Work by borrowing, attach details of the amount of such borrowing, the repayment period and the interest rate, together with the terms and conditions of any security, charge, mortgage or pledge made or provided or intended to be made or provided or imposed by any financial institution in respect of such borrowing ~~[and the predicted debt-to-equity ratio].~~

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

- We do not support the insertion of "predicted debt-to-equity ratio" in paragraph 22 of Section IV of Annex I as it would inappropriately expand the jurisdiction of the Authority and have it involved in issues that are beyond its remit.
- The debt-to-equity ratio of a Contractor is not a relevant consideration for the Authority's evaluation of an application for a Plan of Work. Including it here would require Contractors to disclose sensitive commercial information without benefitting the Authority in its consideration of a Plan of Work.
- This would unnecessarily create further work for the Authority in receiving, looking at, and protecting this information, without enhancing its ability to properly consider the application.

**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:

President's text

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 I, Section VI, paragraph 25(b) 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.

25. Where the applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium has previously been awarded any contract with the Authority, attach:

[...]

~~(b) The dates, reference numbers and titles of each report submitted to the Authority in connection with the contract or contracts;~~

[...]

~~(d) [The final report on the results of exploration and baseline investigations, including results of testing equipment and operations in the exploration area.]~~

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

- We note that the Authority will already have all of the information referred to in sub-paragraphs 25(b) and (d) of Section VI of Annex I. It is not clear what value it would provide to require Contractors to resubmit this same information. As such these requirements are duplicative and we propose they are 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:

President's text

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 II, paragraph (a).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.

A Mining Workplan, based on the results of Exploration (at least equivalent to the data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration contracts), should cover the following subject matters:

[...]

[(a).bis A description and schedule of any Exploration activities planned to be conducted following approval of the Exploitation Plan of Work, including a description of the equipment and methods expected to be used.]

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

- We support proposed paragraph (a).bis in Annex II as this recognises that Contractors will also likely to want to continue exploration activities alongside exploitation.
- UNCLOS recognises that Contractors can undertake both exploration and exploitation under the same Plan of Work (e.g. Annex III, Article 3(4)(c)), and the regulations should also recognise this.

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

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name of Working Group:

President's text

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 II, paragraph (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.

A Mining Workplan, based on the results of Exploration (at least equivalent to the data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration contracts), should cover the following subject matters:

[...]

(d) Details of the equipment, methods and technology expected to be used in carrying out the proposed Plan of Work, including the results of ~~full-scale test mining machinery~~ tests conducted and the details of any tests to be conducted in the future, as well as any other relevant information about the characteristics of such technology, including processing and environmental safeguard and monitoring systems, together with details of any certification from a conformity assessment body;

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

- We propose replacing "full-scale mining machinery tests" with the term "test mining" in paragraph (d) of Annex II to ensure that the regulations make consistent use of terms and expressions and that the provisions are clear in what they require and referring to. "Test mining" is the term used in Draft Regulation 48bis and there are no references to "full-scale mining machinery tests" in the regulations.

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

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council@isa.org.jm.

1. Name of Working Group:

President's text

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 II, paragraph (j)

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

A Mining Workplan, based on the results of Exploration (at least equivalent to the data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration contracts), should cover the following subject matters:

[...]

(j) Details on how many vessels [are proposed to] [will] be involved in the mining operations, including how and to where the collected ores [will] [are proposed to] be transported from the mining site to shore for processing, ~~as well as details relating to onshore processing~~;

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

- We consider that the reference to "onshore processing" in paragraph (j) in Annex II would inappropriately expand the jurisdiction of the Authority and have it involved in issues that are beyond its remit and propose it be deleted.
- There is no justification for the Authority to review the onshore processing operations of Contractors. These are not conducted within the Area, will have no impact on the Area, and are subject to separate and distinct regulatory regimes by the relevant host States.
- Furthermore, onshore processing may be conducted by a range of entities, including third parties to which resources may be sold. This may also change over the lifetime of a project.
- It would be of no benefit to the Authority in its consideration of an application to have this information, but it would impose additional burdens on applicants.

**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:

President's text

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 III, paragraph (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.

A Financing Plan should include:

[...]

[(i) Details of any loans or planned loans, and the institutions making the loans, with an indication whether those institutions apply relevant best practice international standards or their equivalent~~the Equator Principles or the International Finance Corporation performance standards, or equivalent.~~

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

- We consider that the Exploitation Regulations should not directly refer to specific international standards given that these may become outdated or superseded by developments in other fora over the lifetime of the regulations.
- Instead, we propose to replace the specific reference to the Equator Principles and IFC Performance Standards in paragraph (i) of Annex III with a broader, more general reference to "relevant best practice international standards or their equivalent".

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

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1. Name of Working Group:

President's text

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 X, Section 4.1

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.

4.1 The Contractor is hereby granted the exclusive right under this Contract to Explore for and Exploit the resource category specified in this Contract and to conduct [Exploration and](#) Exploitation activities within the Contract Area in accordance with the terms of this Contract. The Contractor shall have security of tenure and this Contract shall not be suspended, terminated or revised except in accordance with the terms set out herein.

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

- We consider that Section 4.1 in Annex X's standard clauses for exploitation contracts should also include a reference to "Exploration" activities, as well as "Exploitation activities".
- This is consistent with the start of Section 4.1 which refers to "exclusive rights...to [Explore for](#) and Exploit..." (emphasis added).
- It is also consistent with UNCLOS, which recognises that Contractors will be engaging in both exploitation and exploration activities under their contracts (e.g. Annex III, Article 3(4)(c)).

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

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1. Name of Working Group:

President's text

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 X, Section 5.1

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.

5.1 The Contractor will obtain title to and property over the Minerals upon recovery of the Minerals from the seabed and ocean floor and subsoil thereof, ~~onto the Contractor's mining vessel or installation~~ and receipt by the Authority of the required payment for those Minerals, in compliance with this Contract.

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

- We consider that the proposal in Section 5.1 in Annex X's standard clauses for exploitation contracts to link ownership in recovered minerals to when the Authority receives payment is inconsistent with UNCLOS, inconsistent with land-based mining best practice regimes, and would result in unreasonable delays to the ability of Contractors to make use of minerals recovered.
- First, Article 1 of Annex III of UNCLOS is clear that "Title to minerals shall pass upon recovery in accordance with this Convention." There is no link here or elsewhere in UNCLOS between the passing of title and the payment regime. It would thus be inconsistent with UNCLOS and beyond the powers of the Authority to impose this kind of requirement through a regulation.
- Second, under best practice land-based mining regimes mined ore becomes the property of the miner when it is extracted from the ground. It would disadvantage deep seabed operators to divert from this approach in relation to deep seabed mining.
- Third, given that payment to the Authority will not be immediate upon the recovery of the minerals, this proposed contract clause would result in problematic delays

between the Contractor's recovery of minerals and their ability to exercise their property interests in such minerals.

- This would enormously complicate the ability of Contractors to make commercial use of the resources by requiring tracking of specific payments for specific extracts, and not exercising certain rights regarding different categories of recovered minerals pending confirmation of payment.

**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:

President's text

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 X, Section 7.1

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

7.1 [In accordance with the 'polluter pays' principle,] tThe Contractor shall be liable to the Authority for the actual amount of any damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions, and those of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, ~~including the costs of reasonable measures to prevent and limit damage to the Marine Environment,~~ [arising out of its wrongful acts [or omissions]], account being taken of any contributory acts or omissions by the Authority or third parties. This clause survives the termination of the Contract and applies to all damage [arising out of the Contractors wrongful acts [or omissions]] regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term. [For the purpose of this clause, 'wrongful acts or omissions', means any unlawful act or omission attributable to the Contractor that results in damage, irrespective of bad intention or negligence]. ~~[Recoverable damages under this clause include: costs of reasonable measures to prevent and limit damage to the Marine Environment, lost revenue, reinstatement, pay-out in lieu of actual reinstatement, and/or measures to compensate for pure ecological loss and harm to the living resources of the Area.]~~

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

- We consider that not every act or omission of the Contractor can properly be considered "wrongful". As such we propose an insertion into the definition of "wrongful acts or omissions" in Section 7.1 in Annex X's standard clauses for exploitation contracts to clarify that this is referring to unlawful acts or omissions.

- We also note that it would be preferable to delete this definition from the regulations entirely given that “wrongful acts” is a term used in UNCLOS which will be subject to its own interpretation, as required, by ITLOS or other dispute settlement processes. Rather than pre-empting any such interpretation, the regulations should be silent on this issue and follow the approach taken to the provision under UNCLOS.
- We also consider that there is no need to define what “recoverable damages” are under the regulations. This would be overly prescriptive. Instead, we can rely on the usual principles relating to damages, which would also apply to UNCLOS, to ensure that appropriate damages are able to be recovered.

**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:

President's text

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 X, Section 9.1

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.

9.1 The Contractor may renew this Contract for periods not more than ~~10~~[XX] years each, on the following conditions:

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

- We note that Section 9.1 in Annex X's standard clauses for exploitation contracts should not contain a specific timeframe until the issue of renewal periods is settled under Draft Regulation 20.

**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:

President's text

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 X, Section 9.3

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.

9.3 The Council shall review the notification, and if the Council determines that the Contractor is in compliance with the conditions set out above, this Contract ~~shall be~~ shall be ~~renewed~~ renewed on the terms and conditions of the standard exploitation contract that are in effect on the date that the Council approves the renewal application.

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

- We consider that "shall be" should be retained in Section 9.3 in Annex X's standard clauses for exploitation contracts as there is no reason why the Council should be able to reject a request for a renewal where all the conditions for renewal have been met.
- Providing discretion to the Council under Section 9.3 would also be inconsistent with Draft Regulation 20(6) which specifies that upon a recommendation by the Commission "an exploitation contract shall be renewed by the Council provided that" the requirements have been met.

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

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1. Name of Working Group:

President's text

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.

Appendix 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.

In respect of an Installation or vessel engaged in activities in the Area, notifiable events for the purposes of regulation 3~~4~~6 include [any of the following events, except for where it constitutes an "Incident" for the purposes of these regulations]:

~~[1. Fatality of a person.]~~

~~[2. Missing person.]~~

3. Occupational lost time illness.

4. Occupational lost time injury.

~~[5. Medical evacuation.]~~

5.bis. [Marine Mammal Fatality ~~or evident distress~~]

~~[6. Fire/explosion resulting in an injury or major damage or impairment.]~~

~~[7. Collison resulting in an injury or major damage or impairment.]~~

8. Significant leak of hazardous substance.

9. Unauthorized Mining Discharge.

10. Adverse environmental conditions with likely significant safety and/or environmental consequences ~~[such as serious harm].~~

11. Significant threat or breach of security, [including cyber security].

~~[12. Implementation of Emergency Response and Contingency Plan.]~~

~~[13. — Major impairment/damage compromising the ongoing integrity or emergency preparedness of an installation or vessel.]~~

14. Impairment/damage to safety or environmentally critical equipment.
15. ~~[Significant] e~~Contact with fishing gear [resulting in its damage].
16. ~~[[Suspected] c~~[C]ontact with submarine pipelines or cables [resulting in its damage].]
17. ~~[[Significant] e~~Contact with equipment related to marine scientific research [resulting in its damage].

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

- We propose removing the reference to “evident distress” in paragraph 5.bis as it is unclear what “evident distress” means, how such distress would be determined, or why such distress should trigger a notification obligation.

**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:

President's text

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.

Schedule, definitions

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.

"Best Available Scientific **[Evidence] [Information]**" means the scientific information and data accessible and attainable that, in the particular circumstances, is of good quality and is objective, within reasonable technical and economic constraints, and is based on internationally recognized scientific practices, standards, technologies and methodologies.

["Closure" means activities undertaken at within a Contract Area particular site once commercial production has ceased, and includes; Decommissioning, post-mining monitoring and reporting, and any rehabilitation and restoration or compensatory measures that may be agreed.]

"Commercial Production" shall be deemed to have begun where a Contractor engages in sustained large-scale recovery operations which yield a quantity of materials sufficient to indicate clearly that the principal purpose is large-scale production rather than production intended for information-gathering, analysis or the testing of equipment or plant.¹

¹ This wording is taken from article 17 (2) (g) of annex III to the Convention. Article 17 (1) (b) (xiii) of annex III to the Convention requires the Authority to provide for a definition of commercial production, reflecting the objective criteria under article 17 (2) (g). A clearer definition of commercial production will be needed.

"Contractor" means a contractor having a contract in accordance with Part III and, where the context applies, shall include its employees, subcontractors, agents and all

persons engaged in working or acting for them in the conduct of its operations under the contract.

[Alt “Contractor” means a party to an exploitation contract in accordance with Part III of these regulations] [and, where the context applies, shall include its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under the contract.]

“Good Industry Practice” **[“Best Industry Practice”]** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in the marine mining industry and other related extractive industries worldwide, [based on Best Environmental Practice, which is based on Best Available Scientific Information and Best Available Technology]. [Employment of the latest widely accepted stage of development (state of the art) of processes, of facilities or of methods of operation, consistent with the Fundamental Principles, including using skill, diligence, prudence and foresight which is an would reasonably be expected to be applied by a skilled and experienced person engaged in the marine mining industry.]

“Guidelines” means documents that provide guidance on technical and administrative matters, issued by the **[Authority] [Commission and the Secretary-General, respectively]** pursuant to regulation 95. **[Guidelines have to be considered as recommendatory]**.

[Alt “Guidelines” means a document that supports the implementation of the Regulations from an administrative and technical perspective. Guidelines will also clarify documentation requirements for an application, detail process requirements (e.g. for the public consultation process, annual reporting and periodic review), and provide guidance on the interpretation of regulatory provisions. The Guidelines are recommendations and not requirements].

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

[Alt “Material Change” means a substantial or significant change to the fundamental basis on which the original report, document or plan, including a Plan of Work, was accepted or approved by the Authority.]

“Rules of the Authority” means ~~[the Convention], [the Agreement]~~, these regulations and other rules, regulations and procedures of the Authority [including Standards] **[and Guidelines] [decisions of the Council or Assembly of the Authority, and any other**

ISA instruments expressed as being binding upon Contractors] as may be adopted from time to time.

[Alt.1 “Standards” means methodological, procedural, technical or environmental rules that are necessary to implement the regulations and to ensure a coherent approach to monitoring and assessment, including performance and process requirements, adopted pursuant to regulation 94. Standards are legally binding on Contractors and the Authority”.]

[Alt.2. “Standards” means such documents adopted by the Authority pursuant to regulation 94.]

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

- We support the proposed definition “**Best Available Scientific Information**” and using the word “information” rather than “evidence” in this term and definition.
- In relation to the proposed definition of “**Closure**” we propose replacing the term “particular site” with “Contract Area” for clarity and to increase the specificity of the definition. This would also ensure the definition is consistent with the approach taken in the definition of “Decommissioning”. Referring to “Contract Area” will ensure that it is clear that Closure is referring to activities related to the post-production phase of a specific Contract Area.
- We agree with the President’s comment that a clearer definition of “**Commercial Production**” will be needed as the current wording does not reflect the objective criteria required under UNCLOS.
- In relation to the proposed definition of “**Contractor**”, we prefer the Alt. “Contractor” definition as the original definition had an element of circularity by defining “Contractor” by reference to the term “contractor”. However, we propose to remove the reference to employees, contractors, agents, and persons engaged by or working for the Contractor. The Contractor is the counterparty to the contract with the Authority. The Contractor’s employees and other personnel cannot qualify as “the Contractor” given they are not directly party to the contract.
- In relation to the proposed definition of “**Good Industry Practice**”, we maintain our opposition to the additional language proposed to be added to this definition. These are overbroad, excessive and not clearly defined. We consider that the regulations should not be overly prescriptive which will only result in their becoming outdate more quickly. There is also no need to set out the level of detail proposed here given the meaning of the defined term is clear. We propose retaining the original definition and considering using Guidelines to clarify this key concept.
- In relation to the proposed definition of “**Guidelines**”, we prefer the original definition proposed which is simple, short and adequate to cover all the relevant concepts. We should avoid making this regulations and definitions more prescriptive then necessary.
- In relation to the proposed definition of “**Material Change**”, we prefer the alternative definition but propose adding the term “fundamental” to clarify that for a

change to be material it must be a change to something central to the acceptance or approval given by the Authority.

- In relation to the proposed definition of “**Rules of the Authority**”, we consider that these should be defined to include any rules, regulations or procedures (RRPs) adopted by the Council. However, it should not include other instruments such as Guidelines or Recommendations which have a different status to RRP.
- In relation to the proposed definition of “**Standards**”, we prefer the Alt.2 definition as it is a simpler, straightforward and flexible definition. This is to be preferred over the more prescriptive approach taken in the Alt.2 definition.