

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

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

1. Name of Working Group:

IWG: Institutional Matters

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

Republic of Nauru

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

Regulation 13(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.

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

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

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

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

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

~~[(iv) — where other marine users are identified in relation to the area under application, consult with those users to agree measures the Contractor will take to give reasonable regard to their activities (such as an easement, or a mining exclusion zone within a reasonable radius);]~~

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

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

For sub-paragraph (e), the original wording should be re-inserted recognizing that matters such as financing will likely be contingent on the approval of a plan of work.

We also seek clarity on the term “environmental performance obligations” in the context of this sub-paragraph.

The reference to criteria defined by the Council should be deleted as applications will be assessed in accordance with the Convention, 1994 Agreement, the regulations, standards and guidelines.

As to (g), the proposed text is too prescriptive for regulations. The subject matter is covered succinctly by paragraph 4(d) and can be expanded upon in applicable guidelines.

As to (h), the subject matter is properly addressed in paragraph 1(d).

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Regulation 13(2)

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

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

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

As to sub-paragraph (a) see comment on paragraph 1(e) above.

As to (ii), we are not sure what is intended by a “significant incident”. Equally, relevant matters are those to be assessed in the closure plan.

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Regulation 13(3)(b)

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

(b) The technology ~~[knowledge and]~~ procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan ~~[and] and~~ the Closure Plan, ~~{and the applicable Regional Environmental Management Plan}~~ including the technical capability to ~~[identify and]~~ monitor key environmental parameters ~~[and ecosystem components so as to detect any adverse effects]~~ and to modify management and operating procedures ~~[as required to avoid the potential for Serious Harm] [when appropriate];~~

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

As to paragraph 2, contractors may not formally contract technical partners until an application is approved.

As to sub-paragraph (b), REMPs are policy instruments and not obligations on a contractor. EMMPs for example, should be drawn up taking account of the relevant REMP.

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Regulation 13(4)

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

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

We don't consider that it is the role of the Commission as a legal and technical body to determine whether each proposed plan of work individually contributes to the realising of benefits for humankind as a whole.

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Regulation 13(4)(e)

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

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

We would support the original text in the first part of this sub-paragraph.

As the REMP is considered a policy instrument, these should be “taken into account”

This paragraph (4)(e) overlaps with paragraph 4(f).

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Regulation 13(7)

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

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

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

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

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

The basis for regulation 13 is the assessment of applicants and applications. It is not for the Commission nor the Authority to evaluate sponsoring State legal systems. This is a matter for the sponsoring State to satisfy the requirements of the Convention.