

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS
DURING THE 29TH SESSION: COUNCIL - PART I**

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

1. Name of Working Group:

Informal Working Group on Institutional Measures

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 15(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.

Regulation 15 [IWG IM]

Commission’s recommendation for the approval or disapproval of a Plan of Work

1. If the Commission determines that the application meets the criteria set out in Regulations 12(4) and 13, it shall recommend approval of the Plan of Work to the Council.

[1. Alt. If the Commission determines that the applicant meets the criteria set out in regulation 13, it [shall][~~may~~] recommend approval of the Plan of Work to the Council.]

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

- We do not consider it appropriate to provide the Commission with a discretionary power regarding whether it will recommend approval of applications that meet all of the criteria and requirements set out in the Regulations.
- The Commission is an expert, technical body, tasked with assessing applications against the criteria set out in the Regulations. It should not go beyond this role by considering other matters when determining or whether or not to recommend approval of applications.
- As such, Draft Regulation 15(1.Alt) should not provide a choice to the Commission if the applicant meets the criteria. The “may” should be deleted.

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Informal Working Group on Institutional Measures

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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 15(2)(a) and (c)

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

Regulation 15 [IWG IM]

Commission’s recommendation for the approval or disapproval of a Plan of Work

[...]

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

~~(a) the Plan of Work does not comply with, or the Commission is unable to determine whether the Plan of Work complies with, [either alone or in combination with other activities and impacts], all requirements stipulated in Regulation 13 [including because of scientific uncertainty or inadequate information];~~

[...]

~~[(c) Such approval would undermine or contradict [the Strategic Environmental Goals or Objectives pursuant to [Regulation 44 ter] or the regional goals, objectives or measures set out in the [relevant] applicable Regional Environmental Management Plan.]~~

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

- In relation to Draft Regulation 15(2)(a), the Commission should be required to assess applications on the basis of the best available scientific evidence and information, request information as needed, and receive input from relevant experts to make a determination regarding applications.
- There is no reason that the Commission should ever be in a position of being unable to determine whether a proposed Plan of Work complies with the requirements in Draft Regulation 13. As such, we propose to remove this language from the sub-paragraph.

- In relation to Draft Regulation 15(2)(c), its contents are not relevant considerations for the Commission when assessing proposed Plans of Work. It would inappropriately elevate the status of Regional Environmental Management Plans to legally binding instruments. There has been no decision of the Council to elevate such documents to legally binding instruments.

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Informal Working Group on Institutional Measures

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 15(3)(a) and (c)

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Regulation 15 [IWG IM]

Commission’s recommendation for the approval or disapproval of a Plan of Work

[...]

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

~~(a) Such approval would permit a State party or entities sponsored by it to Mmonopolize the conduct of activities in the Area with regard to the Resource category in the proposed Plan of Work in accordance with applicable relevant Standards, taking into consideration account relevant Guidelines; or~~

~~[...]~~

~~{(c) Such approval would permit a State party or entities sponsored by it to Mmonopolize or significantly control the production of any single Mineral or metal produced globally.; or}~~

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

- We remain concerned by the overly broad language used in Draft Regulation 15(3)(a) and (c) and its attempt to redefine the Convention’s already clear standard for anti-monopolisation provisions.
- These sub-paragraphs are unnecessary and difficult to implement, particularly at the early stages of exploitation activities where there is only likely to be one or two entities undertaking such activities. As such, these paragraphs should be deleted. If any anti-monopolisation rules are to be included in the Draft Regulations, they should reflect those set out in Article 6(3)(c) of Annex III of the Convention.

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1. Name of Working Group:

Informal Working Group on Institutional Matters

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

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

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

Draft Regulation 15(5)

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Regulation 15 [IWG IM]

Commission’s recommendation for the approval or disapproval of a Plan of Work

[...]

5. ~~[At its next available meeting,] T~~the Commission shall consider any such representations made by the applicant when preparing its reports and recommendations to the Council, which it shall do within 30 days of its receipt of such representations including through intersessional or virtual meetings if necessary ~~[alt 1. provided that the representations have been circulated at least 30 Ddays in advance of that meeting] [alt 2. which it shall do within 30 days of its receipt of such representations]. The Commission shall then consider the application afresh, in the light of the representations, in accordance with this Section 3.~~

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

- We do not consider it necessary or appropriate to limit the Commission’s consideration of these matters to its regularly scheduled meetings. The Commission already has a heavy workload at its scheduled meetings, which will only increase once the Draft Regulations are adopted. As such, the Commission must be ready to work intersessional and virtually to fulfil its mandate and work under these Regulations.
- As such, we propose the changes reflected above. We support the alt 2 wording for Draft Regulation 15(5) and object to including the reference to Commission’s “next available meeting”. The Commission is empowered to work intersessionally. It should make use of this power to ensure the efficient processing and consideration of applications and representations by applicants.

- Linking the Commission's consideration of these representations to its meeting schedule also risks it not complying with the overarching and intended timeframe for its consideration and reporting on applications for Plans of Work.
- As such, we propose that the Commission should consider representations by applicants under Draft Regulation 15 within 30 days of receipt to ensure there is no unnecessary delay in these processes.

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Draft Regulation 15(6)

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Regulation 15 [IWG IM]

Commission’s recommendation for the approval or disapproval of a Plan of Work

[...]

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

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

- Draft Regulation 15(6) purports to grant a broad and undefined power to the Commission to refuse applications. This is inconsistent with the Convention, under which the Commission must recommend approval or disapproval, and cannot merely ‘refuse’ an application.
- Commission disapproval of applications is already covered by Draft Regulation 15(4) so it is unclear what purpose Draft Regulation 15(6) has in addition to that language.
- As such, Draft Regulation 15(6) should be deleted.