

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS  
DURING THE 29<sup>TH</sup> 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.jm](mailto: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 18 bis (1. quat)

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

Regulation 18 bis [President's Text]

Obligations of the Contractors

[...]

~~[1. quat Contractors shall throughout the term of their contract, for the purposes of activities in the Area and ancillary activities, only use vessels flagged to registries of States that are States Parties to the Authority, and only use ports located in States that are States Parties to the Authority. In cases where the Contractor seeks to use flags or ports of non-member States of the Authority, the prior approval of the Council is required and is conditional upon receiving a written commitment from such non-member State or States to enforce the rules, regulations and procedures of the Authority against the Contractor and to cooperate with the Authority for the purposes of securing compliance with the rules, regulations and procedures of the Authority, where required.]~~

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

- Consistent with our submission on Draft Regulation 5(3) we oppose the proposed Draft Regulation 18 bis (1. Quat). This paragraph would unnecessarily restrict options for contractors in relation to which vessels and ports they can use to undertake activities.
- Requiring contractors to only use vessels and ports from Member States would be extremely problematic – particularly for contractors in the Clarion-Clipperton Zone, given the geographic proximity of ports of the United States. Prohibiting the use of these ports and vessels would hinder emergency response capabilities and also connectivity with global supply chains. It would also be anti-competitive by artificially limiting operational options for contractors.

- We also note that there is no connection between the Authority's jurisdiction and contractors' use of ports. As recognised by the Seabed Disputes Chamber in its Advisory Opinion, once minerals are removed from the Area and are on route to port on the high seas, the Authority's jurisdiction ends. It is impermissible for the Authority to attempt to extend its reach to contractor operations outside of activities in the Area.

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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 18 bis (2) and (3)

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Regulation 18 bis [President's Text]

Obligations of the Contractors

[...]

~~2. The contractor, its holding, subsidiaries, affiliated and Ultimate Parent companies, agencies and partnerships shall have responsibility or liability for any damage arising out of wrongful acts in the conduct of its operations, account being taken of contributory acts or omissions by the Authority, and shall be held liable for the actual amount of damage.~~

~~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.~~

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

- We reiterate our opposition to Draft Regulation 18 bis (2) and (3). While we recognize the importance of ensuring there is an effective liability mechanism regarding exploitation activities, there is no legal basis for the approach proposed.
- The contract establishes the primary legal relationship regarding exploitation rights, and it is between the contractor and the Authority. The contractor alone remains responsible and liable for its performance. It is neither legally permissible nor appropriate for the Authority to attempt to unilaterally expand the scope of liability under the contract to non-parties.
- Draft Regulations 18 bis (2) and (3) are also contrary to established and fundamental contractual rules and norms of the legal systems of most member States. Non-parties to a contract are rarely bound by that contract, especially via a unilateral extension of contract obligations without their consent, with no reciprocal rights given in exchange.