

**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:

Consolidated 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 Use of Terms and Scope, Mining Workplan

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.

Schedule

Use of terms and scope

[...]

“Mining Workplan” means the document referred to in Annex II, [including any modifications made from time to time in accordance with these Regulations](#).

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

- We propose amendments to this definition to recognize that the Mining Workplan should be a living document that is reviewed and adjusted in accordance with changing conditions.

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Schedule, Use of Terms and Scope, Serious Harm

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.

[“**Serious Harm**” means any effect from activities in the Area on the Marine Environment which represents an [unlawful] significant adverse change in the Marine Environment [outside of the Mining Area and that is irreversible or lasts for multiple generations of the relevant population](#), determined according to the rules, regulations and procedures of the Authority on the basis of internationally recognized standards and practices informed by Best Available Scientific Information [and, where available, relevant traditional knowledge of Indigenous Peoples and local communities].]

~~[Alt. “**Serious Harm to the Marine Environment**” means an Environmental Effect that, individually in combination or cumulatively meets any of the following criteria:~~

- ~~———— (a) it is not likely to be redressed through natural recovery within a reasonable period;~~
- ~~———— (b) it impairs the ability of affected populations to replace themselves;~~
- ~~———— (c) it degrades the long-term natural productivity of habitats or ecosystems;~~
- ~~———— (d) causes, on a more than temporary basis, a loss of species richness or biological diversity, including community structure, genetic connectivity among populations, ecosystem functioning and ecosystem services on the seabed, at the sea surface, and in midwater and in the benthic boundary layer, or habitat; or~~
- ~~———— (e) any other criteria contained in the relevant Regional Environmental Management Plan, or Standards.]~~

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

- We support the original definition of “Serious Harm”, with one amendment, as compared to the alternate proposal to define “Serious Harm to the Marine Environment”. The alternative definition is particularly problematic given the detailed criteria it specifies –

including sub-paragraph (a) which is not realistic given that most mineral resources will not naturally recover in a reasonable period.

- We are also concerned the proposed new definition is vague and may elevate all environmental impacts to being “Serious Harm to the Marine Environment” given that any “impairment” or “degradation” could fall within this definition. Such an elevation to the definition would be inconsistent with the object and purpose of an exploitation phase pursuant to Part XI of the Convention.
- We consider the original definition of “Serious Harm”, when read with the definition of “Marine Environment”, was sufficiently clear with one change. Creating a new term to cover the same concept invites ambiguity, contradiction and confusion.
- Importantly, we are concerned that the original definition of “Serious Harm” failed to reflect the concept of spatial and temporal scale, which is needed to ensure the definition is meaningful. The level of harm caused by an impact can only be determined by reference to an appropriate spatial and temporal scale. We have proposed edits to the wording to ensure that such a scale is considered.
- In particular, the Mining Area (where Minerals will be directly extracted from) will necessarily be subject to significant adverse change as minerals will be removed from the environment. These impacts cannot be included within the scope of Serious Harm given they are necessarily entailed as part of the mining process and cannot be avoided. Contractors cannot be penalized for activities and impacts that UNCLOS explicitly mandates – i.e. deep seabed mining.

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Schedule, Use of Terms and Scope, Mitigate

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.

“Mitigate” and “Mitigation” means acting/an action or activity intended to remedy, reduce or offset known potential negative impacts to the environment. These occur in a strict hierarchy:

- (a) Avoiding an Environmental Effect altogether by undertaking or not undertaking a certain activity or parts of an activity;
- (b) For Environmental Effects that cannot be avoided, minimizing effects by limiting the degree or magnitude of the activity and its implementation [to the extent practicable and necessary to ensure protection of the Marine Environment];
- (c) For Environmental Effects that cannot be avoided or minimised rectifying the effect by repairing, rehabilitating or restoring the affected Marine Environment; and
- (d) For Environmental Effects that cannot be avoided, minimised or rectified, reducing or eliminating the impact over time through preservation and maintenance operations during the life of the mining activity;
- {(e) Offsetting, only as a last resort.}

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

- We support the addition of subparagraph (e) as offsetting should be considered a part of the mitigation hierarchy. Offsetting is a recognized part of mitigation and there is no reason to exclude it from the Draft Regulations.

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Schedule, Use of Terms and Scope, Best Available Techniques

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 Techniques” means the ~~latest stage of~~ most appropriate development, and ~~state-of-the-art~~ processes, facilities or methods of operation, within reasonable technical and economic constraints, that indicate the practical suitability of a particular measure for the prevention, reduction and control of pollution and the Protection of the Marine Environment from the harmful effects of activities in the Area, taking into account the guidance set out in the applicable Standards and Guidelines.]

~~[Alt. “Best Available Techniques” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:~~

~~(a) ‘techniques’ includes both the technology used and the way in which the Installation is designed, built, maintained, operated and Decommissioned;~~

~~(b) ‘available techniques’ means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator.~~

~~(c) ‘best’ means most effective in achieving a high general level of protection of the environment as a whole;]~~

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

- We are concerned that the current proposed definitions of Best Available Techniques are too prescriptive and would establish a standard that is often unlikely to be attainable in practice.
- Instead, we propose amendments using language from the original Alt 2 of this definition. These changes help to clarify the definition and ensure it recognizes that the best available technique has to take into account matters such as practical suitability.

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Schedule, Use of Terms and Scope, Contractor

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.

“Contractor” means a party to an Exploitation Contract (other than the Authority) 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.~~

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

- We reiterate our concern previously raised that this proposed definition of Contractor would cover a range of individuals and entities that have no legal relationship with the Authority.
- The Contractor is the sole counterparty to the contract with the Authority, and the entity with rights and obligations under that contract and the Convention. It is inappropriate to attempt to also bind or apply the Draft Regulations to other people and entities that (a) have no obligations vis-à-vis the Authority and (b) have no rights or protections such as those that are available to Contractors.

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Schedule, Use of Terms and Scope, Effective Control or effectively controlled

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“Effective Control” or “effectively controlled” means ~~a the required~~, substantial and genuine link between Sponsoring State and Contractor, demonstrated by the Contractor being a national of the Sponsoring State and being subject to its effective jurisdiction and regulatory control ~~which includes for non-State actors the location of the company’s management and beneficial ownership, as well as the ability of the Sponsoring State to ensure the availability of resources of the Contractor for fulfilment of its contract with the Authority and any liability arising therefrom, through the location of such resources in the territory of the Sponsoring State or otherwise.~~

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

- We continue to be concerned by this proposed attempt to redefine effective control as compared to how the Authority has applied this term for the life of the Exploration Regulations.
- Contractors and Sponsoring States have operated under the established understanding of effective control – namely that of effective regulatory control – and legitimately relied upon this precedent established by the Authority in the context of the Exploration Regulations.
- Sponsoring States have enacted domestic regulatory regimes to reflect this test, and Contractors have invested significant funds in reliance on this test.
- The current test of effective regulatory control is consistent with the Convention, simple to apply, and maximizes opportunities for developing country Sponsoring States. It is also respectful to each State Party’s sovereign choices regarding sponsorship and does not lessen any obligations upon contractors.

- We recognize that some parties have linked certain liability issues with the discussion of effective control but consider that this confuses two separate issues. Regardless of the test adopted for effective control, the issue of liability and access to funds to remedy unlawful environmental damage will still need to be dealt with in specific regulations. Further, the current approach of regulatory control will not in any way prevent the Authority from adopting appropriate measures and regulations to ensure issues around liability are dealt with.
- As such we have proposed amendments to this definition to reflect the existing sponsorship regime which has used the test of regulatory control.