

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 30<sup>TH</sup> SESSION:  
COUNCIL - PART II**

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(s) of Delegation(s) making the proposal:**

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

**2. Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 35

**3. 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 35** *[President’s Text]*

**Human remains and objects and sites of an archaeological or historical nature**

1. The Contractor shall **[without undue delay]** notify the Secretary-General in writing 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, **[within 7 Days of receiving it]** to the Sponsoring State **[or State]**, 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. **[Such]** human remains, object or site in the Contract Area should be disposed of for the benefit of humankind as a whole or preserved, so that no further Exploration or Exploitation shall take place, within a reasonable radius, **[to be determined by the Authority in consultation with the Contractor]**, after taking into account the views of the State from which the remains or objects originated. **[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.]**

2. **As part of its decision-making process in paragraph 1, the Authority shall take into account the work of the all organs of the Authority and the work of the United Nations Educational, Scientific and Cultural Organization with respect to underwater cultural heritage, [particularly as defined in Article 1(a) of the 2001 Convention on the Protection of the Underwater Cultural Heritage].**

**Regulation 35 alt**

**Human remains and Underwater Cultural Heritage**

**1. Exploitation activities in the Area shall be conducted in a way that does not negatively affect [known] human remains or underwater cultural heritage.**

2. A Contractor shall notify the Secretary-General in writing within 24 hours of any discovery of suspected human remains or underwater cultural heritage in the Contract Area, and their location. The notification shall include the provisional mitigation and preservation measures taken to avoid any interference with these human remains or underwater cultural heritage and within a reasonable radius thereof.

3. Following the discovery of any such human remains or underwater cultural heritage, and in order to avoid their disturbance, no further exploitation shall take place, within a reasonable radius, based on the type of resource and as informed by the Applicable Standards and taking into consideration the Applicable Guidelines, until the Commission adopts a decision in accordance with paragraph 5. Pending any action by the Commission, the Secretary-General may suggest to the Contractor further provisional measures to preserve the human remains or underwater cultural heritage and their natural context taking into consideration the applicable relevant guidelines.

4. The Secretary-General shall transmit in writing within 48 hours the information concerning the discovery and the provisional measures suggested to the contractor, if any, to all Members of the Authority, the President of the Council, the Director General of the United Nations Educational, Scientific and Cultural Organization, as well as to any other relevant international organization or other stakeholders having asked the Authority to be notified in such cases.

4 alt bis. Any State party may declare its interest in being consulted on how to ensure the protection of the human remains or underwater cultural heritage. Such a declaration, shall be transmitted to the Secretary-General within ten (10) days of the notification of the discovery by the Secretary-General, and shall be based on a verifiable link to the human remains or underwater cultural heritage concerned, particular regard being paid to the preferential rights of States of cultural, historical or archaeological origin. The sponsoring State and the flag State of the vessel from which the exploitation is being carried out shall be considered interested States.

4 alt ter. Within fifteen (15) days of the notification of the discovery by the Secretary-General, a consultative meeting of the interested States referred to in the previous paragraph shall be convened to include the contractor, the Secretary-General, the Director General of the UNESCO and accredited observers.

4 alt quater. Within fifteen (15) days of the conclusion of the convened meeting, the interested States shall make one of the following recommendations to the Commission:

(a) that the contractor may continue with its exploitation activities;

(b) that further investigation is necessary to inform an appropriate recommendation, in which case, the consultative meeting shall have an additional fifteen (15) non-extendable days for its deliberations;

(c) in the case of human remains, that the remains shall be preserved under [relevant] [best] [[generally accepted underwater] archaeological standards or practices; or

(d) that other protection measures shall be applied to human remains or underwater cultural heritage.

5. After ascertaining the views of Member States, particularly those with preferential rights under Article 149 of the Convention, and all other interested parties identified in paragraph 4 alt ter, and taking into consideration the relevant Guidelines, the Commission shall, at its next meeting and in any case within 60 days of the notification of the discovery by the Secretary-General, make a determination with respect to the discovery of suspected human remains or underwater cultural heritage.7 The determination of the Commission may include one or more of the following matters:

- (a) confirmation of the nature of the discovered human remains or underwater cultural heritage;
- (b) a determination of the buffer zones;
- (c) a requirement for the Contractor to provide additional information or share additional data with the Authority;
- (d) a determination as to the termination of exploitation activities within a clearly defined area surrounding the discovered human remains or cultural heritage; or
- (e) any other matter that the Commission determines to be appropriate and necessary in the circumstances and in light of the applicable Guidelines.

The Commission may also suggest to the Member States any measure to preserve the human remains or underwater cultural heritage and their natural context taking into consideration the applicable Guidelines.

5 bis If the Commission determines that exploitation activities cannot continue, the Contractor shall be compensated, including but not limited to the vicarious areas of equivalent size or value elsewhere or through an appropriate waiver of fees in accordance with the applicable Standard.

6. The Commission shall forward all information used in making its determination under paragraph 5, including the location of the human remains or underwater cultural heritage to the Secretary-General for inclusion in the Authority's database.

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

- In light of the constructive discussions in the Intersessional Working Group, we consider that Draft Regulation 35 could be substantially improved to ensure it is effective in its aim of protecting underwater cultural heritage (UCH), including intangible UCH. As such, drawing on language proposed in those discussions, we propose Draft Regulation 35alt to replace Draft Regulation 35.
- Our proposed Draft Regulation 35alt is based on the proposal put forward by the Kingdom of Spain as part of the work of the Intersessional Working Group on UCH.
- Our proposed Draft Regulation 35alt improves upon the existing Draft Regulation 35 by:
  - Having a clear scope, linked to finds of cultural objects (including archaeological or historical objects and human remains). This focus on tangible objects is aligned with the language of the paragraphs, especially it is only tangible objects that can be 'found' during activities in the Area and given that intangible UCH is best protected through proactive stakeholder engagement processes. It also provides much-needed certainty for Contractors, Member States and the Authority.

- Using the term “underwater cultural heritage” as opposed to just “cultural heritage”. This term should be used consistently throughout Draft Regulation 35alt and other relevant regulations.
- Requiring the State Parties wishing to be consulted on the effective protection of any found human remains or UCH to provide a declaration based on “*a verifiable link to the human remains or underwater cultural heritage concerned*”. We consider that such verifiable link is crucial to ensuring there is an effective and efficient consultation process.
- Elaborating the procedural aspects associated with a cultural find in order to ensure certainty with respect to timing of decisions.
- Providing a broad range of options for potential decisions that can be made by the Legal and Technical Commission (**Commission**) in response to a find of UCH, and ensuring appropriate compensation is provided if a Contractor is prevented from undertaking activities in part of its contract area as a result.
- Allowing for further detail around this process to be set out in Standards or Guidelines. For example, more guidance may be needed regarding procedures to ascertain the views of non-Member States, UNESCO, other international organizations, and stakeholders that have a legitimate interest in the relevant objects found.
- We also note the Commission is the best organ to coordinate and decide upon appropriate responses to found objects. The Commission has the technical expertise and responsiveness necessary to quickly and efficiently engage in potential finds and determine the most appropriate way forward. It is also more agile and able to meet as needed to determine these matters, rather than wait for the Council’s twice-yearly meetings. Given the importance of these finds, decisions on how to deal with them should not be delayed by the Council’s meeting schedule.
- We consider our proposed Draft Regulation 35alt to be preferable to the current version of Draft Regulation 35, as explained below. If, however, Draft Regulation 35 is retained, we consider the reference to the work of the United Nations Educational Scientific and Cultural Organization (**UNESCO**) with respect to UCH, in particular the 2001 Convention on the Protection of Underwater Cultural Heritage, in paragraph 2 is unnecessary. The ISA operates in a significantly different context to UNESCO and not all UNCLOS States Parties are party to the 2001 Convention. It is also unclear what “*the work of*” UNESCO refers to or would require of the Authority.
- We also take this opportunity to note the existence of other proposals and views expressed in regard to the protection of UCH and would like to offer three broad observations in regard to some of the approaches being contemplated.
  - First, we recognize the important role that stakeholders, including Indigenous Peoples and local communities, have in projects in the Area, and note that they will need be included in consultations and assessment processes to ensure their interests, cultures and UCH is safeguarded through concrete actions and ongoing engagement where impacts are identified. At the same time, we consider that the Draft Regulations should not include references to free, prior and informed consent (**FPIC**). FPIC and how it is applied in different contexts is a highly contested concept, with various understandings and approaches taken to it. We have not yet seen any proposals that would offer an effective and clear mechanism for FPIC implementation in the context of deep seabed mining.
  - Second, we are concerned with proposals that disproportionately focus on safeguarding intangible UCH while omitting the protection of tangible UCH. We would also caution against attempting to use the Draft Regulations to pronounce general rights as they pertain

to Indigenous Peoples and local communities, rather than being focused on the regulation of activities in the Area. Further, the Draft Regulations should not contain requirements that are vague, difficult to measure and unrealistic to implement for both Contractors and the ISA.

- Third, proposals to establish an entirely new permanent committee that would focus solely on intangible cultural heritage issues in the context of exploitation are likely to duplicate existing work and result in overlapping mandates and processes. The value of such a committee has not been clearly articulated, particularly given the existing ISA organs and their roles. The key organs of the Authority are specified in UNCLOS, and their mandates already cover the consideration of matters relating to the protection of cultural heritage. Thus, the Commission should have the appropriate expertise available to consider any such matters as part of its work. Member States in the Council are also appropriately placed to voice any relevant concerns on behalf of their Indigenous Peoples and local communities. In addition, all applicants are engaging with local communities and Indigenous Peoples as part of their Environmental Impact Assessments. A new committee would thus be unnecessary and duplicative of much of this work.