

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

Protection and Preservation of the Marine Environment

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

The Pew Charitable Trusts

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

DR 48ter

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.

- **Red font** are proposed amendments by the Facilitator in this revised text.
- Our proposed amendments and our questions or comments regarding the facilitator's remarks are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

1. Subject to this Regulation, an applicant shall conduct a "test mining" [prior] to submitting an application for a Plan of Work for Exploitation. Information gathered through "test-mining" shall be compiled in a test mining report in accordance with Annex IV, be in accordance with and take into account the relevant Standard and Guideline and shall inform on the ~~Environmental Plans application for a Plan of Work for Exploitation pursuant to Regulation 11.~~

[2. "Test mining" means an *in situ* testing of the integrated system of all relevant equipment (~~e.g. collector, raiser and release techniques~~) and process steps (~~e.g. collector, raiser and release techniques~~) for ~~an exploitation activities~~ Exploitation in a contract area under such technical, spatial and temporal conditions which ~~allows the "test mining" to provide for the provision of~~ provides evidence to support the information provided by an applicant in its application for a Plan of Work for Exploitation, and to assist the Commission and the Council in its evaluation of the application against criteria contained in regulation 13, including demonstrating to ensure demonstrate that the proposed mining equipment is technically and operationally appropriate, and that assumptions regarding impacts on the Marine Environment is effectively protected from harmful effects, can be validated. Data collected during test mining can be used to validate numerical models and predict including the cumulative effects, in accordance with Article 145 of the Convention. ~~and that the effects could be monitored.~~ "Test mining" should also be undertaken in order to optimize the integrated system with regard to its potential effects on the Marine Environment.]

2. ~~alt. The purpose of test mining is to ensure that effective protection of the marine environment from harmful effects is ensured. Test mining projects shall as a general rule provide evidence that appropriate equipment is available to ensure the effective protection of the Marine Environment in accordance with Article 145.~~

3. "Test mining" in the Area requires a prior approval by the Authority consistent with the criteria in Regulation 13(1), and shall be carried out with reasonable regard for other activities in the Marine Environment, in accordance with articles 87 and 147 of the Convention, and in accordance with the [relevant] Standard and taking into account the relevant Guideline and Recommendations, in particular to ensure that the Marine Environment is effectively protected from [harmful effects] [serious harm], including the cumulative effects, in accordance with Article 145 of the Convention.

4. Test mining does not have to be undertaken if the evidence pursuant to Paragraph 24 has been provided through other "test-mining" nby the applicant, by other contractors, or in the context of another approved Plan of Work for exploration or exploitation. In such a case, the applicant shall compile in its "test-mining" report the information already available and explain why this is sufficient evidence and the Commission shall assess whether the evidence pursuant to Paragraph 24 has been demonstrated in its review of the application and report to the Council pursuant to Regulations 11-15.

5. Before Commercial Production may commence in accordance with Regulation 25 ~~After the approval of a Plan of Work~~, a validation monitoring system shall be established by the contractor, in line with the Environmental Management and Monitoring Plan, in order to monitor whether the requirements of the Plan of Work are complied with. In case of non- compliance, Regulation 52 will apply.

6. The gains from mineral resources which have been collected during 'test mining' shall be paid to the Environmental Compensation Fund, as established by Regulation 54.

[6 alt. Prior to the commencement of Commercial Production, the contractor shall provide the Authority with a test mining royalties report containing the information specified in the Standards and Guidelines in respect of any minerals collected during 'test mining'. Royalties in respect of mineral resources that have been collected during 'test mining' shall be paid at the time the contractor makes its first payment of royalties after the date it commences Commercial Production.]

7. [If a Mmaterial Cehange has been determined in accordance with Regulation 25 and 57 (2), the relevant organ of the Authority shall consider and determine whether and on which aspects an additional "test mining" has may have to be undertaken in order to provide sufficient information pursuant to paragraph (2). In this case, paragraphs (1) and (3) apply.]

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

Para (1): We support replacing 'Environmental Plans' with the application for a Plan of work as it seems that the information gained from test mining and the subsequent report will inform more than just the Environmental Plans (mining plan, finance plan etc.).

Para (2): similar to our comments made in DR47ter, the ISA should have its criteria for assessing an application in one place (DR13) and cross reference that criteria rather than restating elements of it elsewhere in the regulations. We have made amendments above along those lines. If the criteria in DR 13 does not sufficiently capture the relevant factors then we would recommend making those changes there. We would prefer this para over 2alt as we consider that the purpose of test mining is to support the information in the application for a Plan of Work and assist the ISA with its decision-making to ensure that no Exploitation is approved that meet Art 145 requirements.

Para (3): Pew does not take a position at this time whether test mining would occur during the exploration phase or during some new test mining phase (between exploration and exploitation), just that it must be preceded by an EIA/approval process, and should be completed successfully prior to, and in order to inform, an application for a Plan of Work. As such, we think drafting of (3) is not sufficiently clear. 'Prior approval by the Authority' is very ambiguous, and insertion of reference of criteria for an application for a Plan of Work does not make sense to us. This provision raises several questions that need to be addressed as policy points before this Reg can be finalised. E.g.: When does this happen? What is the application / approval process? Who approves? What are the approval criteria? What if the ISA does not approve? How does this approval process fit with the existing exploration contract / Regs? It also doesn't

explicitly say that a prior EIA must be carried out before test mining activities can commence. If it is decided that test mining would take place under exploration, then the Exploration Regulations (and LTC Recommendations on EIA) should be cross-referenced here as the instrument under which the approval would need to be obtained; and these instruments should be updated to ensure they are fit-for-purpose. If it is decided instead that test mining should be an intermediary phase between exploration and exploitation as has also been proposed, we believe this would need to be covered in the exploitation regulations. Presumably, it would have to be an entirely new Part of the exploitation regulations possibly preceding DR5, but that is still unclear to us.

Para (4): Along the lines of comments made to para. 2 there should be provisions added into DRs 11-15 (about review of a Plan of Work) that requires the LTC to assess whether the evidence presented from the test-mining is sufficient or otherwise meets necessary requirements of this regulation and if not empowers the LTC to reject or refer the application back to the applicant, if the test mining information provided is not deemed sufficient.

Para (5): Similar to para 3 we think this provision needs a bit more detail. We agree that a validation monitoring system should be established, but it is unclear to us how this is related to test-mining activities, which we understand should take place at an earlier stage. It may therefore be confusing to include this paragraph (5) here, in a section about test-mining. We are also unclear how this differs from the requirements that will be included in the EMMP, and the functioning of the EMS. Should this not already be covered by the EMMP (and included in the relevant sections that set out EMMP requirements), rather than through a separate provision here in the test-mining section?

We also question the relation of validation monitoring to the feasibility study. Is the implication that validation monitoring Presumably this is being carried out during the work done to prepare the feasibility study, with the results would be included in that study and used to determine whether the contractor may proceed to commercial production as part of the ISA's decision making process? This potentially seems to conflate the function of the feasibility study (which we understand is about economic viability of the deposit and the mining plan) with a more environmental management perspective (which we understand should be covered by the EMMP and EMS). We further note that the feasibility study does not comprise a formal part of the Plan of Work, like the other Plan documents, so any changes to operations required as a result of the validation monitoring would need to be reflected by a change in the Plan of Work, not only reported in a feasibility study. We also question whether the reference to regulation 52 is appropriate which deals with the EMMP periodic review and performance assessment. It seems that issues of non-compliance during this pre-commercial production phase should be fleshed out in DR 25 and probably linked to DR 46ter/Annex VII (EMMP) and 103.

Para (6): We appreciate the further clarity provided by para 6alt, however, we query whether all profits or proceeds obtained from minerals collected via test mining, where greater than the royalty amount, must be received by the ISA, not just the royalties. Otherwise this makes test-mining a potentially commercially profitable mining exercise for the contractor, which we do not believe is appropriate, and could lead to manipulation of the system - whereby de facto mining occurs before all proper approvals have been obtained. We also note that this paragraph presumes the test-miner will obtain an exploitation contract, and move to Commercial Production. The Regulations should also take account of potential exploration contractors who test mine and obtain possession of minerals, but who do not successfully proceed to these later exploitation stages.

Para (7): If the amendments to paragraph 5 are accepted then we believe paragraph 7 can be deleted. It also may make more sense to move some of this to regulation 25 and note there that if a material change is determined additional test mining may be required.