

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART III**

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:

Informal Working Group – Environment.

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

Republic of Nauru

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

Regulation 48 ter

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.

1.shall be compiled in a test mining report in accordance with Annex IV, be in accordance with ~~and take into account the relevant applicable~~ Standard and ~~take into account the applicable~~ Guideline ~~and shall to~~ inform ~~on the an~~ application for a Plan of Work for Exploitation ~~and its evaluation by the Commission~~.

[2. "Test mining" means an in situ testing of the integrated system of all equipment and process steps (e.g. ~~including the~~ collector, ~~raiser~~ and release techniques) for exploitation activities in a contract area under ~~such appropriate~~ technical, spatial and temporal conditions, ~~which allows the "test mining" for the provision of evidence to support the information provided by an applicant in its application for a Plan of Work for Exploitation, and to assist the Commission in its evaluation of the application~~ to demonstrate that the proposed mining equipment is technically and operationally ~~appropriate~~ ~~feasible~~, and that assumptions regarding impacts on the Marine Environment ~~is~~ to ensure it ~~is~~ effectively protected from harmful effects ~~in accordance with article 145 of the Convention~~, can be validated. ~~Monitoring d~~Data collected during test mining can be used to validate numerical models and predict cumulative effects, ~~in accordance with Article 145 of the Convention~~. "Test mining" should also be undertaken ~~in order to with a view to~~ ~~optimiz~~ing 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 ~~applicable~~ Standard and taking into account the ~~relevant applicable~~ Guideline ~~and or~~ Recommendations ~~issued by the Commission under the Exploration Regulations~~, 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 information contemplated by p~~Paragraph 1 has been provided through other “test-mining” ~~undertaken #~~by the applicant, by other contractors, or in the context of another approved Plan of Work for exploration or exploitation. ~~In such a case, Where~~ the applicant relies on such information, it shall compile the information in its “test-mining” report ~~the information already available~~ and explain why this information is sufficient evidence for the purposes of paragraph 2. ~~and~~

4bis ~~¶~~The Commission shall, in its review of an application assess whether the ~~evidence information provided by the applicant in its test mining report~~ pursuant to ~~p~~Paragraph 1 above is sufficient to ~~has been demonstrated in its review of the application the requirements set out in paragraph 2 above,~~ and shall report accordingly to the Council pursuant to Regulations 11-15.

~~5. 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~~ Any 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. To this end, and p~~Prior to the commencement of Commercial Production, ~~the a~~ contractor shall provide the Authority with a test mining royalties report containing the information specified in the applicable 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 material change has been determined in accordance with Regulation 25 and 57 (2), the ~~relevant organ of the Authority~~ Commission shall consider and determine whether and on which aspects any additional “test mining” may have to be undertaken in order to provide sufficient information ~~pursuant to~~ satisfy the requirements of paragraph ~~(2)~~ above. In this case, paragraphs ~~(1)~~ and ~~(3)~~ above apply.

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

As to the facilitator’s proposal to relocate paragraphs 2 and 6 to a standard or guideline, and while not wishing to prejudice any further intersessional discussion on this matter, we consider this unnecessary, and that the removal of unnecessary or superfluous text in this regulation will suffice. Indeed, paragraph 2 contains a definition of test mining and its purpose, which we believe are important in the context of this regulation.

Para 2: we suggest the language “which allows the...its evaluation of the application” be deleted as this is / can be more appropriately captured in paragraph 1.

Para 2alt: while we have no objection to this text, we consider retaining paragraph 2 preferable.

Para 3: regulation 13(1) sets criteria for applicants for a plan of work for exploitation. This is not appropriate for test mining. It is also not possible for one applicant’s “test mining” to consider cumulative effects.

Para 4/4bis: language tidy-up.

Para 5: such monitoring is addressed by other regulatory provisions.

Para 6/6alt: we consider that paragraphs 6 and 6alt can be merged, and should remain part of this regulation.

Para 7: it is important to clarify which organ of the Authority shall make the necessary determination. In this case, it should be the Commission.