

**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:

IWG Environment

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

Norway

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

Draft exploitation regulation 48 ter (test mining)

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. Subject to this Regulation, an applicant shall conduct a “test mining” ~~prior to~~ before starting any commercial mining under an submitting an application for a Plan of Work for Exploitation contract. 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 take into account the relevant Guideline, and shall inform on the Environmental Plans application for a Plan of Work for Exploitation. The purpose of the “test-mining” is to validate that the equipment and the effects of the activity, in particular with regard to the protection of the environment, operates in accordance with the Contract/Environmental Impact Statement/Plan of Work. ~~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 all related process steps (e.g. collector, raiser and release techniques) for an exploitation activities in a contract area under such technical, spatial and temporal conditions which allows the “test mining” to provide 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 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. ‘Test mining’ means a [n in situ] testing of the integrated system of all relevant equipment (e.g. collector, raiser and release techniques) and all related process steps for an exploitation activities under such technical, spatial and temporal conditions (which allows to provide evidence to ensure that the proposed mining equipment is technically appropriate, that the Marine Environment is effectively protected from harmful effects, including the cumulative effects as far as possible, in accordance with Article 145 of the Convention and that the effects could be monitored.)~~

~~2.alt. The purpose of test mining shall contribute to ensuring 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.~~

~~2.alt.2. Which 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 the criteria contained in regulation 13.~~

~~2.bis. The purpose of the “test-mining” is to validate that the equipment and the effects of the activity, in particular with regard to the protection of the environment, operates as described in the Environmental Impact Statement/Plan of Work.~~

~~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.~~

~~3. ‘Test mining’ requires a prior approval by the Authority in the form of an Exploration or Exploitation contract, and shall be carried out in accordance with the relevant (Rules of the Authority) (alternative text: Rules of the Authority including the relevant Standards and taking into account the relevant Recommendations and Guidelines), (in particular to ensure that the Marine Environment is effectively protected from harmful effects, 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 1 has been provided through other “test-mining” ~~by~~ 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 1 has been demonstrated in its review of the application [request] and report to the Council pursuant to Regulations 11-15.

5. After the “test mining”, the Contractor shall submit to the Commission a test-mining report. The test mining report shall provide information on the findings from the test-mining, in accordance with the relevant Standards taking into account the relevant Guidelines. The test-mining report shall provide the Commission with sufficient information to review the results in light of the Environmental Impact Statement/Plan of Work.

6. The Commission shall, without undue delay, review the findings of the test-mining study in light of the Environmental Impact Statement/Plan of Work. If the findings of the “test mining” are in accordance with the Environmental Impact Statement/Plan of Work, the Commission shall notify the Contractor, and the Contractor may commence commercial production in accordance with the Contract.

7. If a material change has been determined in accordance with Regulation 25 and 57 (2), the Commission shall consider and determine whether the Contractor needs to make revisions in their equipment and the relevant documents provided to the Authority. The Commission may also consider whether and on which aspects an additional “test mining” should be undertaken in order to provide sufficient information pursuant to paragraph (2). In this case, paragraphs (1) and (3) apply.

~~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 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 material change 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]

Any “activity” in the Area, including any test mining activity must be conducted under a contract with the Authority in line with the Convention. At this juncture, Norway struggles to see a legal basis in UNCLOS for a “third” intermediary phase of activities, as suggested by some. Norway is therefore concerned that permitting test-mining before a Contract has been granted either for exploration or exploitation would be in conflict with UNCLOS. Therefore, Norway proposes that any test-mining conducted under the exploitation regulations shall be conducted after the submission of the PoW and a Contract has been granted. We recognize that, where test mining is considered necessary, there will need to be an additional stop point before commercial production starts, in order to review the findings of the test. If the test is in accordance with the descriptions previously provided by the Contractor, commercial production under the PoW can start. If the test mining proves a Material Change, changes would need to be made to the equipment or to the EIS. This would in turn call for a revision of the EIS and PoW, and potentially (if deemed necessary) a new test, before commencement of commercial production. Norway has proposed that such a review shall be conducted by the Commission.

The proposals herein are mainly on the structure of the permitting regime, and we have therefore left several remaining alternatives in.

Paragraphs 2, 3 and 7 from the facilitator’s text have been substituted by the same paragraphs from the outcome report from the intersessional working group on test-mining.

Except for the discussion around the bracketed “in situ” requirement, Norway has no strong preference regarding paragraphs 2 or alt. 2. These have been left as is. We have also left paras. 6 and alt. 6 as is. Although, we acknowledge that this is an important element, it is not the object of this concrete proposal.

Para 2bis, 3, 5, 6 and 7 have been amended in line with the stated rationale.

We suggest deleting the original paragraph 5, as this seems covered under the Environmental Monitoring regulations.