

**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](mailto:council@isa.org.jm).

**1. Name of Working Group:**

Informal Working Group – Environment.

**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.**

Draft Reg. 48 ter (3)-(6 alt)

**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.**

3. “Test mining” in the Area requires a-prior approval by the Commission 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]~~ applicable Standard and taking into account ~~the any relevant applicable~~ Guidelines and Recommendations, in particular to ensure that the Marine Environment is effectively protected from ~~[harmful effects]~~ [serious Hharm], ~~including the cumulative effects, in accordance with Article 145 of the Convention.~~

4. Test mining does not have to be undertaken if the information ~~evidence pursuant contemplated by~~ to Paragraph 1 has been provided through other “test-mining” ~~by~~ the applicant, ~~by other contractors,~~ or ~~in the context of~~ under another approved Plan of Work for ~~exploration or~~ exploitation. Where ~~in such a case,~~ the applicant relies on such information, it shall compile ~~in its “test mining” report~~ the information in its “test-mining” report already available and explain together with an explanation as to why this information is sufficient ~~evidence~~ for the purposes of paragraph 2

4bis and I the Commission shall assess whether the ~~evidence~~ information provided by the applicant in its test mining report pursuant to ~~p~~ Paragraph ~~1-4~~ has been demonstrated ~~demonstrates the requirements set out in paragraph 2 in its review of the application~~ 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 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 Secretary-General with a test mining royalties report containing the information specified in the applicable Standards and taking into account any Guidelines in respect of any minerals collected and sold 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.]

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

- We oppose the phrase “consistent with the criteria in Regulation 13(1)” in Draft Regulation 48 ter (3). Regulation 13(1) sets the criteria for applicants for a Plan of Work for Exploitation. Requiring the same from test mining applicants is onerous and would materially burden the Authority and the Contractors. We also support replacing the term “harmful effects” with “Serious Harm”, consistent with our submission on Draft Regulation 48 ter (2).
- We propose to delete the reference to “cumulative effects” in Draft Regulation 48 ter (3) as it is not possible for one applicant’s “test mining” to consider cumulative effects nor is it appropriate to elevate one part of Convention by specific reference to it in this draft regulation.
- We propose to delete Draft Regulation 48 ter (5) as its substantive contents will already be captured under the Contractor’s EMMP. Reiterating these requirements here is duplicative and unnecessary. The contents of Draft Regulation 48 ter (5) do not relate to test mining and instead should be included in the applicable Standard & Guideline if necessary.
- We support the inclusion of Draft Regulation 48 ter (6.alt) as compared to paragraph 6. We recognise that the Facilitator has suggested it be moved to a Standard or Guideline. However, we consider that Draft Regulation 48 ter (6.alt) is required in the Draft Regulations as it clearly establishes when test mining royalties are to be paid by Contractors and through which process this will occur.
- We have also proposed several amendments for clarity and consistency across these texts.

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Draft Reg. 48 ter

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**Regulation 48 ter**

**Test mining**

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~~ applicable Standard ~~and taking into account the~~ Guideline ~~and shall to~~ inform ~~on the an~~ 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 in a contract area under such technical, spatial and temporal conditions which allows ~~the “test mining” to provide~~ 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 whether~~ the Marine Environment is ~~effectively protected from Serious Harm~~ 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.~~

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

- We are broadly supportive of the amendments to Draft Regulation 48 ter but retain some concerns. We have proposed a range of textual edits for clarity and consistency.
- We have proposed amendments to paragraph 1 to clarify that the “taking into account” applies in relation to the Guidelines. We also note the proposal to delete “prior” in this paragraph but query when the Contractor is to undertake test mining if not prior to their application.
- In relation to Draft Regulation 48 ter (2): we propose to simplify this language to make it clearer and focus the definition on the intention behind test mining – which is to demonstrate that equipment is technically and operationally appropriate and validate assumptions regarding environmental impact.
- Consistent with our previous submissions, we also propose removing the reference to optimizing integrated systems. Draft Regulation 48 ter (2) is intended to define what “test mining” means. Definitions should not be used to also create substantive obligations. We also note that requiring “test mining” for all optimization would disincentivize such work.
- We appreciate that the Facilitator prefers the term “harmful effects” over “Serious Harm”, but in our view the appropriate test here is “Serious Harm”.
- The concept of “harmful effects” stems from Article 145 of the Convention, which creates a due diligence obligation upon States Parties to take measures to effectively protect the marine environment from harmful effects. This Draft Regulation is not dealing with a due diligence obligation, but instead it is establishing a specific requirement in relation to the level of protection that is to be achieved and to be considered acceptable as part of the Authority’s consideration a plan of work for exploitation.
- We know that exploitation activities will have an impact upon the marine environment. This is unavoidable. As such, when considering what is feasible in establishing a clear requirement for Contractor’s to meet, we need to ensure a specific and clear standard is employed – namely the standard of Serious Harm.
- We can also support the proposed Draft Regulation 48 ter (2.alt) but note that if it is intended to replace the current paragraph 2 entirely it will remove the definition of “test mining”, which also covers testing of the technology and its efficiency which is important to maintain.

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Draft Reg. 48ter (7)

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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 an additional “test mining” ~~has~~ may have to be undertaken in order to provide sufficient information ~~pursuant to~~ satisfy the requirements of paragraph (2). In this case, paragraphs (1) and (3) apply.

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

- We request clarification as to what material changes are being referred to in Draft Regulation 48ter (7). We propose this paragraph be amended to make this clear.
- We also propose several textual edits for clarity and consistency, including specifying the Commission as the organ of the Authority that will consider whether additional test mining is needed.
- The Commission at the subsidiary organ that is empowered to consider and issue recommendations concerning a plan of work is the appropriate body to make such a determination.