

# 关于“区域”矿产资源开发规章草案的 书面意见

## 《规章草案》总体意见

(一) 关于“试采 (Test Mining)”和“预商采 (Pilot Mining)”

“试采”和“预商采”均为“区域”内活动的组成部分，但属于两种不同性质的活动。

“试采”的本质是工业研究，应当由勘探规章予以规范，并体现在海管局和承包者签订的勘探合同中。

“预商采”的本质是工业生产，应当由开发规章予以规范，并体现在海管局和承包者订立的开发合同中。

无论“试采”还是“预商采”，都需要研究和处理环保问题，在履行勘探合同过程中，“试采”的进行本身就包含对环境影响的研究，只有符合相应的环境规范，才能由勘探转向开发阶段，在履行开发合同过程中，“预商采”本身也包含对环境影响的研究，只有符合相应环境规范，才能由商业生产前期准备阶段转向商业生产阶段。

在开发规章制订过程中，区分“试采”和“预商采”主要有以下考虑：

第一，符合采矿界惯常实践。考察陆地采矿实践，“试采”和“预商采”是两个不同的阶段。前者重在对采矿设备和系统进行测试，规模较小。后者重在对工业生产能力进行试验，规模较大。二者对深海环境的影响也存在差异。

第二，符合海管局现有规定。《勘探规章》对“勘探”一词下了定义，其中提及“使用和测试采集系统和设备、加工设施及运输系统”。法技委于2019年出台《指导承包者评估“区域”内海洋矿物勘探活动可能对环境造成的影响的建议》，其中给“试采”下了定义，即“使用和测试已完成组装并可运行的采矿系统”。在区分“试采”和“预商采”的情形下，试采与上述文件的内容是吻合的。如果不加区分，现有开发规章草案关于“试采”的定义（参见文件ISBA/29/C/CBP.1, Regulation 48ter）与上述文件中的“试采”一词存在明显差别。

第三，有利于加强环境保护。在区分“试采”和“预商采”的情形下，一个承包者如果从事深海矿产商业生产，必须经历两个步骤：一是同海管局订立开发合同，为此必须完成包括试采在内的一系列工作，并符合相应环保规范，或者在提交开发合同申请时，有足够材料证明已具备相关的能力；二是进入真正的商业开采，为此必须完成包括“预商采”在内的一系列工作，并符合相应环保规范。在上述两个步骤中，无论是“试采”对深海环境的影响，还是“预商采”对深海环境的影响，均需由法技委进行审议，并由理事会作出决定，足以确保深海矿产商业生产在满足相应环保标准的基础上有序开展。

## （二）关于履约机制

任何履约机制需符合《联合国海洋法公约》规定，不应影响《公约》对现有机构的职能授权。根据《公约》，法技委在检查和履约方面拥有广泛职能，在法技委下设立检查和履约机制（LTCCC）的模式符合《公约》规定，也凝聚了各方最大共识，符合《公约》规定，应成为我们各方进一步讨论的基础。

## （三）关于沿海国权利

沿海国在“区域”中的权利在《公约》第 142 条有明确规定，不应超越《公约》框架。沿海国作为利益攸关方中的一员，其参与磋商的权利应放在整个利益攸关方协商的框架下

考虑，而非享有单独的、超出《公约》之外的特权。

## 《规章草案》具体意见

### (一) 关于试采/预商采

#### 第 7 条 申请书格式和工作计划所附材料

第 3. bis. (d) bis 款 A Test Mining study prepared in accordance with Regulation 48 ter; 建议将案文修改为 A study of Test Mining pursuant to the Schedule to these Regulations.~~prepared in accordance with Regulation 48 ter~~ In cases where an applicant utilizes mature mining technology that has been internationally validated, there shall be no requirement to conduct Test Mining. Instead, the applicant shall provide supporting materials in relation to the mature mining technology when submitting the application.

理由:此处所称“试采”并非开发规章草案 48ter 中所指的试采,而是源自勘探规章和法技委《指导承包者评估“区域”内海洋矿物勘探活动可能对环境造成的影响的建议》(ISBA/25/LTC/6/Rev.3)的“试采”,详细分析请参见总体

意见第一部分。

申请者如使用国际上已得到验证的成熟采矿技术，则无需重复进行“试采”，但应该在申请批准开发工作计划时，提供有关证明材料。

## 第 25 条 生产前提交的文件

第 1 款 建议将案文修改为 At least 12 months prior to the proposed commencement of production in a Mining Area, the Contractor shall provide to the Secretary-General a Feasibility Study prepared in accordance with [Annex X] and Good Industry Practice, and the applicable Standard, taking into consideration ~~account the applicable~~ Guidelines [as well as the results of the Pilot Test Mining study pursuant to Regulation [48 ~~ter bis~~], paragraph 2 or 3, as applicable, and in accordance with Annex [IV ter].

理由：中方建议区分“试采”和“预商采”，在此背景下第 48 ter 条应对 Pilot Mining 而非 Test Mining 做出规定。开发合同承包者在开始商业生产前，应进行 Pilot Mining 以验证产能、技术、环境等可行性。Test Mining 应在承包者获得开发合同前进行。

## 第 48 ter 条 试采

建议将题目 Test Mining 修改为 Pilot Test Mining, 并对相关条款进行如下修改。

第 1 款修改为 Subject to this Regulation, ~~an applicant~~ for a Contractor shall conduct ~~the~~ "test Pilot Mining" ~~[prior to submitting an application for a Plan of Work for Exploitation]~~ ~~[before starting any Commercial mining Production under an Exploitation Contract]~~. Information gathered through ~~the~~ "test mMining Pilot Mining" shall be compiled in a Ttest Mmining Pilot Mining report ~~in accordance with Annex IV, be~~ in accordance with ~~[and take into account]~~ the [applicable] ~~[relevant]~~ Standards and [taking into consideration] Guidelines ~~[and shall inform on the application for a Plan of Work for Exploitation in particular with regard to the protection of the environment]~~.

第 2 款修改为 " Pilot Mining Test mining" is ~~means an~~ in-situ operating of the integrated system of all equipment and all related process steps (e.g. including collector, raiser and release techniques) for Exploitation activities in a Contract Area under appropriate technical, spatial and temporal conditions which allows the provision of evidence to support the information

~~conducted provided by an applicant in its application for a Plan of Work for Exploitation a Contractor in its preparation for commencement of Commercial Production , and to assist the Commission [and the Council] in its evaluation of the application Feasibility Study [against the criteria contained in Regulation 13 and 15.] [to 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 cumulative effects, in accordance with Article 145 of the Convention. "Test mining" should also be undertaken in order to optimize the integrated system with regard to its potential effects on the Marine Environment.]~~

第 2bis 款修改为 [The purpose of the "Pilot Mining Test Mining" is to validate that the proposed mining equipment is commercially and technically appropriate 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.]

第 3 款修改为 "Pilot Mining Test Mining" in the Area requires a prior approval by the Commission ~~[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 consideration account the [applicable] [relevant] Guidelines and Recommendations [issued by the Commission under the Exploration Regulations], in particular to ensure effective protection for the marine environment from that the Marine Environment is effectively protected from [harmful effects]/[Serious Harm], including the cumulative effects, in accordance with Article 145 of the Convention.

第 4 款修改为 Test Mining does not have to be undertaken if the [information evidence] pursuant to Paragraph [12] has been provided through other "Test Mining" [undertaken] nby the applicant, by other contractors, or in the context of another approved Plan of Work for Exploration or Exploitation. [WhereIn such a case,] 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 purpose of paragraph 2.and] tThe Commission shall, [in its review of an] [application] [request] assess whether the [information provided by the applicant in the Test Mining reportevidence] pursuant to Paragraph 1 [above is sufficient to



~~has been] demonstrated [compliance with] [the requirements set out in paragraph 2 above in its review of the application] and report to the Council pursuant to Regulations 11-15.---~~

第 6 款修改为 ~~[Any] [The]~~ gains from Mineral resources which have been collected during Pilot Mining Test Mining shall be paid to the Environmental Compensation Fund, as established by Regulation 54.

第 7 款修改为 If a Material Change has been determined in accordance with Regulation 25 and 57 (2), the ~~[Council Commission relevant organ of the Authority]~~ shall ~~consider and~~ determine whether and on which aspects an ~~[y]~~ additional Pilot Mining Test Mining may have to be undertaken based on the recommendation of the Commission in order to provide sufficient information ~~[pursuant]~~ to ~~[satisfy the requirements of]~~ paragraph ~~(2)~~[above]. In this case, paragraphs ~~(1)~~ and ~~(3)~~[above] apply.

第 8 款修改为 After the Pilot Mining Test Mining, the Contractor shall submit to the Commission a Pilot Mining test mining report. The Pilot Mining Test Mining report shall provide information on the findings from the Pilot Mining test mining, in accordance with the Standards and taking into consideration Guidelines. The Pilot Mining test mining report

shall provide the Commission with required sufficient information to review the ~~results~~ findings in light of the Environmental Impact Statement/Plan of Work. The Commission shall, without undue delay, review the findings of the Pilot Mining study and make recommendations to the Council.

第 9 款修改为 The Council shall, without undue delay, consider the findings of the Pilot Mining ~~test-mining~~ study in light of the Environmental Impact Statement/Plan of Work based on the recommendation of the Commission. If the findings of the Pilot Mining study ~~test-mining~~ are in accordance with the Environmental Impact Statement/Plan of Work, the Council shall make an affirmative decision and notify the Contractor through the Secretary General. Thereafter the Contractor may commence Commercial Production in accordance with the Contract.]

理由：中方建议区分“试采”和“预商采”（有关分析详见中方关于“试采”和“预商采”的总体意见）。基于此，本条对订立开发合同后、商业生产前的准备阶段即“预商采”提出一整套法律规范。

此外，在第 1 款中，建议将 Commercial Mining 改为 Commercial Production，以与术语表中的概念保持一致。在

第3款中，因其提及《公约》第145条，建议将有关措辞做出调整，以与该条款原文保持一致。

## 第92条 海底登记册

第1(e) ter款 The results of [environmental performance assessment] monitoring and Test Mining projects; 建议将案文修改为 The results of [environmental performance assessment] monitoring and Pilot Mining ~~Test Mining~~ projects.

理由：中方建议区分“试采”和“预商采”（有关分析详见中方关于“试采”和“预商采”的总体意见）。基于此，在开发合同执行过程中登记的应是“预商采”相关信息。

## 附件二 采矿工作计划

第(d)段 Details of the equipment, methods and technology expected to be used in carrying out the proposed Plan of Work, including the results of [Test Mining] conducted, as applicable, and the details of any tests to be conducted in the future, as well as any other relevant information about the characteristics of such technology, including processing and environmental safeguard and monitoring systems, [and electricity or other

energy supply] together with details of any certification from a conformity assessment body; 建议删除[Test Mining]的方括号;

理由：申请者要获得开发合同，理应提供试采的结果供审议。

## 术语

Test Mining means the use and testing of a fully integrated and functional mining system including collection systems and water discharge systems.

理由：法律和技术委员会印发的适应于勘探阶段的《指导承包者评估“区域”内海洋矿物勘探活动可能对环境造成的影响的建议》(ISBA/25/LTC/6/Rev.3)，对试采进行了定义，建议《开发规章》中沿用该定义。

Pilot Mining means an in situ operation of the integrated system of all equipment and all related process steps, including collector, raiser and release techniques, for Exploitation activities in a Contract Area under appropriate technical, spatial and temporal conditions, which provides evidence concerning, inter alia, environmental impact, commercial capacity, duration of operations to validate feasibility of future Commercial Production.

理由：开发阶段的预商采主要用于验证产能、技术、环保等方面的可行性，为进入商业开发阶段做准备。

## (二) 关于检查履约机制

### 第102条 履约委员会

第1款建议修改为 A Compliance Committee (“the Committee”) within the Commission is hereby established ~~to assist the Council in carrying out its responsibility to exercise control over activities in the Area as provided for under Part XI of the Convention.~~ All instances of non-compliance shall be brought to the attention of the Committee, which shall report to the Council. The Committee shall comprise 15 members. ~~Each regional group shall designate 2 members from among Council members, who shall serve for a period of 2 years, with the possibility of extension. The remaining 5 members~~ which shall be designated by the Commission taking into account geographic representation and from among those with appropriate expertise within the Commission to carry out the functions of the

Committee in accordance with this Regulation.

理由：中方认为在法技委下设履约委员会，更为符合《公约》规定。履约委员会委员由法技委从其委员中任命，初期人数不宜过多，可由15名法技委委员组成，考虑地理代表性和履职所需专业。如需增加专业知识，可提出根据工作的需要，在未来增加相关专业的委员。

第2 (e)款，建议修改为 Review Consider any instances of non-compliance of the annual reports of Contractors, upon the request of as examined by the Commission, and consider any instances of non-compliance;

理由：审议承包者年度报告是法技委目前承担的职能，履约委员会作为法技委的下设机构，可按法技委要求对承包者年度报告中的违约行为进行审议。

第2 (h)款，建议修改为 Investigate allegations from members of the Authority, members of the Commission, relevant coastal States or the Secretary-General, as well as from observers of the Authority and other Stakeholders on possible instances of Contractor non-compliance, ~~including through any whistleblowing procedures under Regulation 101 bis.~~ ;

理由：目前单一案文第101 bis条已被删除，中方认为，“吹哨人程序”不应纳入在开发规章中。首先，吹哨人程序涉及

到海管局的一般政策，由开发规章来进行规定并不合适。其次，建立吹哨人程序应符合《公约》规定，需要明确其与海管局现行投诉程序和规定的关系。因此，本款中也应删除相关内容。

第2 (m)款，建议修改为With the prior authorization of the Commission, mMake recommendations to the Council for the issue of emergency orders and appropriate penalties; and

理由：向理事会建议发布紧急命令，按照《公约》第165条第2款(k)项，明确属于法技委的职能，如有必要，法技委可授权履约委员会行使该职能。

建议删除2 (o)款 Appoint, where time is of the essence, a competent independent person to perform any or all of the functions of an Inspector where the nature or subject matter of an inspection requires specialist knowledge or experience that is not available on the approved roster of Inspectors; and.

理由：既然建立检查员名册，就应由在名册上的检查员行使检查职能，如果存在缺乏专业性等问题，应及时在名册上增加符合要求的检查员，而非另行指定独立人员来承担检查职能。

建议删除 2. bis Any recommendations from the Commission to the Council pursuant to Article 165(i), (j) and (k)

of the Convention, as well as any instances of non-compliance identified by the Commission or the Secretariat in the course of carrying out their functions or otherwise, shall be promptly forwarded to the Committee in the form of a report for consideration and further action as appropriate. With the exception of complaints made against the Committee, all complaints received pursuant to Regulation 101 and 101bis shall also be immediately forwarded to the Committee for consideration and further action as appropriate. Nothing in this provision shall limit the right of the Committee to commence its own investigation of non-compliance. In cases where complaints are made against the Committee, the Council shall directly address such complaints and determine how to proceed.

理由：该条存在很多问题，例如，建议理事会代表管理局向海底争端分庭提起司法程序（165 条第2 (i) 款），经海底争端分庭作出裁判后，就任何应采取的措施向理事会提出建议（165 条第2 (j) 款），向理事会建议发布紧急命令（165 条第2 (k) 款），这些应由理事会直接审议并作出决定，理事会在审议后可要求履约委员会采取行动，而非由履约委员会在理事会作出决定前，自行采取行动。建议删除该段。

第 3 款，建议修改为 The [Commission may revise](#)



~~Committee shall develop~~ its ~~own~~ rules of procedure for the Committee, including for the convening of hearings, which shall be approved by the Council.

理由：履约委员会作为法技委的下设机构，应在法技委目前议事规则下开展工作，如确有必要，可以修订法技委议事规则，在其中进一步明确履约委员会的工作程序。

建议删除4. Decisions of the Committee shall be taken by consensus. If all efforts to achieve consensus has been exhausted, decisions shall be taken by a majority of members present and voting. In the case of a tie, the Chair of the Committee shall have the decisive vote.

理由：为保障履约委员会有效履职，需要进一步明确相关标准、准则和程序，包括决策程序，检查员名册的管理，检查报告的审议，必要时举行公开会议等，这些可以另行规定，无需在开发规章中规定。

建议删除5. The Committee shall meet at regular intervals preferably using virtual means, and in urgent cases involving possible instances of non-compliance, shall convene virtually and on short notice. Members of the Committee shall rotate among themselves on a monthly basis in order to ensure that one member is always available “on call” in cases of non-compliance that require urgent action. In addition, the

Committee shall appoint its own chair and vice chair. Unless otherwise determined by the Committee, the Chair of the Commission, the Chief Inspector and a member of the Secretariat designated by the Secretary-General shall be invited to attend the meetings of the Committee but without the right to vote. The Secretary-General shall facilitate the meetings of the Committee.

理由：为保障履约委员会有效履职，需要进一步明确相关标准、准则和程序，包括决策程序，检查员名册的管理，检查报告的审议，必要时举行公开会议等，这些可以另行规定，无需在开发规章中规定。

### (三) 关于沿海国权利义务

#### 第 49 条 环境监管

建议删除第 4 款和 4alt 款

~~4. In implementing paragraph 1, the Sponsoring State and Contractor shall consult, with any adjacent coastal State with a view to avoiding infringement of their rights and legitimate interests, in accordance with Regulation 4.~~

~~[4. Alt. In implementing paragraph 1, the Sponsoring State or States and Contractor shall maintain targeted and proactive consultations with any adjacent coastal States and other potentially most affected coastal States in accordance with Regulation 93ter with a view to avoiding infringement of their rights and legitimate interests, in accordance with the Convention.]~~

修改建议：关于 4, 4alt, 目前规章中关于沿海国、邻近沿海国等定义尚不明确, 且关于沿海国权利, 应以《公约》第 142 条为依据, 在不涉及“‘区域’内活动涉及跨越国家管辖范围的‘区域’内资源矿床”情况时, 沿海国应作为普通利益攸关方参与协商, 无需单独提及, 建议删除 4, 4alt。

## 第 93 ter 条 与沿海国协商

### 建议删除本条

理由：《公约》第 142 条已经充分规定了沿海国在“区域”内的权利, 沿海国的权利不应超出《公约》的框架, 在参加利益攸关方协商时, 沿海国应当作为普通利益攸关方参与协商, 并不享有独特法律地位。

## 附件四 环境影响报告

### 13.5. Stakeholder ~~and coastal State~~ Consultation

Describe how comments received under Stakeholder consultation have been or will be taken into account, or why they have not been taken into account, and the reasons for that decision. The summary should be based on the detailed response of the applicant to each consulted party and be available for review.

建议删除标题中的“and coastal State”。

理由：沿海国应作为普通利益攸关方参与协商，无需进行单独规定。

(四) 关于其他重点环保条款

## 第 26 条 履约保证金

第 3 款 The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period. ~~[In such cases, commercial production may only commence once the full amount has been provided.]~~ 建议修改为 The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period or a Performance Security provided by the qualified commercial bank.

理由：增加保函的选项，一方面有助于减少承包者前期资金压力，另一方面符合国际惯例，可以达到履约保证的目的。

## 第 31 条 合理考虑海洋环境中的其他活动和基础设施

建议将原题目 Reasonable regard for other activities and infrastructure in the Marine Environment 修改为 Accommodation of activities in the Area and in the marine environment

并增加第 3 款, 3. Other activities in the marine

environment shall be conducted with reasonable regard for activities in the Area.

修改理由：《公约》第 147 条中既有承包者对海洋环境其他使用者的“合理顾及”（第 147 条第 1 款），也要求海洋环境其他使用者对深海勘探开发活动的“合理顾及”（第 147 条第 3 款），强调对等原则，应实现承包者与海洋环境其他使用者的相互顾及。然而，本条款的标题和内容却未提及后者，造成权利和义务的不对等。应在修改标题并在本条款中补充这一内容。

第 1bis 款 Each Contractor shall exercise due diligence to ensure that it does not cause damage to known submarine cables or pipelines or interfere with other activities in the Contract Area or surrounding Marine Environment. 建议修改为 Each Contractor shall ~~{exercise due diligence to ensure that it does not cause damage to}~~ [carry out exploitation activities under an Exploitation Contract with reasonable regard to] known submarine cables or pipelines or interfere with other activities in the Contract Area or surrounding Marine Environment. In particular, the Contractor shall:

修改理由：开发规章对《公约》的发展应在合理范畴内，不应与《公约》根本精神和国际海底管理局的根本职权相冲突。国际海底管理局的根本职能是管理和控制“区域”内勘

探开发活动，而非监管和保护海底电缆。尽职确保（due diligence to ensure）与《公约》第 147 条规定的“合理顾及”有本质区别。开发规章要求承包者要尽职确保不损害海底电缆已严重超越这一职能，应改为《公约》规定的“合理顾及”。

## 第 44 bis 条 区域环境管理计划

第 2 款 In the event that an application for a Plan of Work is submitted for an area where no such Regional Environmental Management Plan exists, the drafting of a Regional Environmental Management Plan applicable to the area in concern shall be prioritised. ~~[and adopted without any undue delay, taking into account Section 2, Article 15 b/c of the 1994 Agreement]~~, 建议保留[and adopted without any undue delay, taking into account Section 2, Article 15 b/c of the 1994 Agreement]

修改理由：目前并不是所有区域都通过了区域环境管理计划且规章中并未提及未通过区域环境管理计划的区域的承包者该如何平等地进入开发阶段，这违背权利平等原则。基于平等原则，若申请者在没有区域环境管理计划的区域提交申请，海管局应不加延迟地制定这一区域的区域环境管理计划，并将其作为优先事项。

## 第 45 条 制定环境标准和准则

第 3 款中增加 necessary, 具体为 The Authority shall not approve any Exploitation unless the [\[necessary\]](#) environmental Standards and Guidelines have been adopted.

修改理由：环境标准和准则的制定需要有一定程度的开发活动实践，在实践中才能积累科学知识，最终完成标准制定。例如，采矿修复成效评估，必须经过一定程度的修复活动实践之后才能了解具体效果，实现有效评估。此外，随着对深海认知不断加深，可能有更新的标准，批准阶段只需出台必要的标准和准则。

## 第 47 条 环境影响评价

建议删除第 2 (e) 款。具体为

2. ~~[In] U~~ndertaking the impact assessment, the applicant or Contractor shall complete:

~~(e) Provide for engagement with potentially directly affected Stakeholders and in accordance with [Regulation 93 ter], applicable Standards and taking into consideration Guidelines; and~~



修改理由：根据《公约》第 141 条有关“不加歧视”的规定，利益攸关方协商应面向所有国家，不应加以区别。确定“潜在直接受影响利益攸关方名单”的做法与第 141 条的“不加歧视”规定相违背，建议删除 e 款。