

15 December 2017

Stakeholders consultation on Draft Regulations on Exploitation of mineral resources in the Area  
Secretariat of the International Seabed Authority  
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**Subject: Comments on document ISBA/23/LTC/CRP.3\* "Draft regulations on exploitation of mineral resources in the Area"**

Dear Madam/Sir,

It is my pleasure to forward to you the EMEPC comments on the document ISBA/23/LTC/CRP.3\* "Draft regulations on exploitation of mineral resources in the Area"

## **1. Introduction**

The Portuguese Task Group for the Extension of the Continental Shelf (EMEPC) is a governmental body under the Ministry of the Sea responsible for preparing and monitoring the project for the extension of the continental shelf beyond 200 nautical miles within the scope of article 76 of the United Nations Convention on the Law of the Sea (UNCLOS).

EMEPC welcomes the initiative taken by the Secretariat of the International Seabed Authority (ISA) on the collection of contributes from Stakeholders aiming to improve the Draft Regulations on Exploitation of Mineral Resources of the Area (Document ISBA/23/LTC/CRP.3). EMEPC strongly supports the role of the ISA as the regulator of the deep seabed mining activities and recognizes the importance of the common heritage of Mankind attributed to the seabed and its resources in areas beyond national jurisdiction. Moreover, as a Coastal State, Portugal has been committed with the implementation of Sustainable Development Goal 14 on the conservation and sustainable use of the Oceans, Seas and Marine Resources. EMEPC also shares concerns on the limited participation of Member States and governmental bodies in previous consultations and is hoping to contribute to strengthen their role along the road map established by the Council of the ISA to complete a final version of the Regulations.

The ideas and comments expressed in this contribution are made considering that the final version of the Regulations will be resource oriented and focused on the exploitation of polymetallic nodules. Apart from the general juridical framework that will control the activities related with the exploitation of all marine mineral resources of the Area, eventually at this stage some of the Regulations can be only

applicable to the polymetallic nodules (e.g. size of the contract area). EMEPC considers that the Draft Regulations follow a logical structure and are presented in a clear and generally concise manner. Some issues on terminology and time-bound framework are referred in the comments on some provisions presented below.

## **2. Comments on the Draft Regulations**

### **Part II – Applications for approval of Plans of Work for Exploitation in the form of Contracts**

#### **Section 1: Form of applications**

##### **Draft Regulation 2 – Qualified applicants**

In paragraph 6. it is considered that an Applicant must have conducted exploration activities under an exploration contract with the Authority. An exception is considered for those that use information collected prior to the entry into force of the Convention for the Sponsoring State. EMEPC considers that environmental and biological data collected prior to the entry of the Convention for the Sponsoring State may be outdated in most cases. Even in cases where substantial information exists in the ISA database, which may be sufficient for a potential Applicant to perform the geological characterization of a mineral deposit and to prove its economic viability, exploration activities must be conducted *a priori* to ensure the collection of current baseline parameters following best practices.

##### **Draft Regulation 4 – Form of applications and information to accompany a Plan of Work for Exploitation**

Paragraph 1. refers that each application for approval of a Plan of Work shall be in the form prescribed in Annex I to the Regulations. However, Annex I says nothing about the items that shall be addressed in the Plan of Work, like size of mining(s) area(s), equipment, estimated amount of yearly collected nodules, dewatering processes, etc. This kind of information is currently included in Annex II – Pre-Feasibility Study and Annex V – Environmental Impact Statement, but it is unclear if the Plan of Work refers only to the set of Annexes from Annex I to VIII.

Although outside the jurisdiction of the ISA, EMEPC agrees that information related with the downstream mineral processing, geographic location and environmental standards applied on land, should also be provided. Production of metals following high environmental standards from the mineral resource collection (deep sea) to the processing plant can stimulate Contractors to create new certifications for the mining industry.

Paragraph 4. EMEPC agrees that mining areas sought for Exploitation do not need to be contiguous. However, the existence of a minimum distance between them should be considered and based on environmental grounds and taking into account the submitted Environmental Impact Statement.

### **Section 3: Consideration of applications by the Commission**

#### **Draft Regulation 7 – Assessment of applicants**

Paragraph 1.(d) refers that the Commission shall determine if the applicant “Has, or will have, the financial and technical capability to carry out the Plan of Work and to meet all obligations under any exploitation contract”. While EMEPC has all the confidence in the capability of the Commission, it seems very difficult to accept that the approval of a Plan of Work could be granted on the basis of the expectation that the applicant will have in the future financial and technical capability to carry out the Plan of Work and to meet all obligations. Also, EMEPC does not understand the reference to “any exploitation contract” since the approval of a Plan of Work should be expressed in one contract.

EMEPC suggests the inclusion of a new item “f) Has shown the economic viability of the project”.

Paragraph 2.(b) What is an “environmental management system”? This seems to be a new classification. EMEPC does not foresee anything relevant outside the Environmental Management and Monitoring and Closure Plan and suggests removing it.

Paragraph 4.(c). This paragraph is also related with Draft regulation 21, both referring to the effective protection of the Marine Environment in accordance with Article 145 of the Convention. EMEPC suggests that caution should be taken in this matter and points for the need of rewording the paragraph. Article 145 of the Convention is part of the principles governing the Area as a whole (Part XI, Section 2 of the Convention). The protection of the Marine Environment is even at a broader scale as can be interpreted from the reference to the “coastline” in paragraph (a) and “flora” in paragraph (b) of Article 145. The Plan of Work for Exploitation is site specific. Moreover, it is difficult to envisage that a mining project would provide for the effective protection of the Marine Environment in accordance with Article 145. EMEPC considers that the wording of paragraphs 3. And 5. Included in Draft Regulation 23 is adequate and should be also considered in paragraph 4. of Draft Regulation 7.

#### **Draft Regulation 8 – Amendments to the proposed Plan of Work for Exploitation**

Paragraph 1. EMEPC suggests replacing “an applicant may request the Secretary-General to amend or modify its application” by “an applicant may request the Secretary-General to amend or modify its Plan of Work”. This will also provide consistency with Draft Regulation 46(2), which is referred in the following paragraph.

### **Part III – Exploitation contracts**

#### **Draft Regulation 13 – Term of exploitation contracts**

Paragraph 3.(a). This paragraph states that “An exploitation contract shall be renewed, provided that the resource category is recoverable annually in commercial quantities from the Contract Area”. EMEPC suggests replacing “commercial quantities” by “commercial and profitable quantities”.

## **Draft Regulation 16 – Transfer of rights and obligations**

Paragraph 2. The word “exploration” should be replaced by “exploitation”.

## **Part IV – Environmental Matters**

### **Draft Regulation 18 – Environmental Scoping Report**

Paragraph 1. What is a “prospective applicant” as referred in the paragraph? For how long can this stage remain before the submission of an application for a Plan of Work? A timeframe must be clearly defined between the end of the exploration contract and the submission of an application for approval of a Plan of Work to obtain an Exploitation contract.

### **Draft Regulation 19 – Environmental Impact Statement**

Paragraph 2. includes a reference to the “Environmental Impact Area”. EMEPC suggests that duplication of terms should be avoided. This is a new classification that probably could be replaced by one of the following two designations: mining areas or Impact Reference Zones.

### **Draft Regulation 22 – Revised Environmental Management and Monitoring Plan and Closure Plan**

Paragraph 4.(e) considers the possibility for the Commission to recommend amendments or modifications to the revised plans as a condition for their approval. However, this Draft Regulation says nothing about the timeframe of the revision process.

### **Draft Regulation 32 – Temporary suspension in production**

Paragraph 2. Instead of “no later than 24 hours after productions is suspended or reduced”, EMEPC suggests “no later than 72 hours after productions is suspended or reduced”.

### **Draft Regulation 33 – Avoidance of unnecessary waste in respect of the Resources of the Area**

Paragraph 2. EMEPC suggests replacing “optimum recovery of the metals under an exploitation contract” by “optimum recovery of the minerals and metals under an exploitation contract”

## **Part VII – Financial terms of an exploitation contract**

### **Section 3 – Liability to and determination of royalty**

Most references to “Mineral” should be replaced by “Metal” from **Draft Regulation 51 (Definitions)** to **Draft Regulation 54 (Calculation of royalty payable)**.

### **Draft Regulation 52 – Valuation of mineral-bearing ore**

Table 1 included in this Draft Regulation refers to the metals considered as economic under the exploitation of polymetallic nodules recovered from the Area. However, since resources of the Area are the common heritage of Mankind, EMEPC considers that a value for other industrial metals (occurring in a concentration above a certain threshold that still needs to be discussed) should also be included in the valuation process.

## **Part XI – Inspections**

### **Draft Regulation 85 – Inspections:General**

EMEPC suggests the ISA to search for available solutions that could be implemented in Contractor's installations in order to inspect activities under the Exploitation contract.

## **Annex V**

EMEPC suggests that this Annex can be reduced and more focused on the scope of the mining activities in the Area.

### **3. Final comments**

The transparent and open discussion of the Draft Regulations is a paramount step towards the developing of the common heritage of Mankind. We assure you that EMEPC will be available to support and collaborate with the Secretariat and the ISA in further developments of the regulatory framework.

Yours sincerely,

Isabel Botelho Leal



Head of the EMEPC

