

GIBSON DUNN

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## Mining of the Deep-Sea — The Trump Administration’s Executive Order, the International Law Framework and Implications for Investors

*The Executive Order describes seabed mineral resources as “a core national security and economic interest” for the US and aims to establish the US as a global leader in seabed mineral exploration and development.*

On 24 April 2025, President Trump issued an Executive Order—“*Unleashing America’s Offshore Critical Minerals and Resources*” (**Executive Order**)—intending to significantly advance the United States’s (**US**) deep-sea mining capabilities in the Pacific Ocean.<sup>[1]</sup> The Executive Order—which describes seabed mineral resources as “*a core national security and economic interest*” for the US—aims to establish the US as a global leader in seabed mineral exploration and development. On 25 June 2025, the US Department of the Interior announced new policy steps “*to speed up the search and development of critical minerals offshore*”, advancing the Executive Order. Several companies have already applied (or are reported to be in negotiations) for commercial licenses to mine in international waters. These moves have been met with criticism, including from the European Union (**EU**) and China as violating the framework for exploitation under international agreements—and many States have called for a moratorium or precautionary pause raising concerns regarding the potential harm to the marine environment.

The Executive Order has changed—and will continue to shape—the course of the international debate on deep-sea mining. Whilst the US is forging ahead with its plans to issue licenses by setting its own standards, this move could prompt other countries to do the same. Investors should therefore carefully assess the risks involved—whether that is uncertainty around licensing and regulatory environment, increased costs, litigation risk and/or concerns with respect to environmental impacts of deep-sea mining. In circumstances where deep-sea mining in international waters is considered to be a violation of international law, investors also need to carefully assess how their investments may be impacted, and consider available options to protect them.

We explore the international legal framework applicable to deep-sea mining, and further consider implications of the Executive Order, States' responses and issues that need to be considered by investors and companies interested in exploring the opportunities in further detail below.

### **The International Framework**

Deep-sea mining may take place in waters within a country's jurisdiction, known as exclusive economic zones (**EEZs**). EEZs are areas extending 200 nautical miles from a State's coast and, subject to their domestic laws, States have jurisdiction to undertake deep-sea mining (and otherwise control, explore and conserve natural resources) within these zones. States such as Norway, the Cook Islands, and Sweden have actively explored deep-sea mining operations in their respective EEZs. Several other States—including Brazil and China—are supportive of deep-sea mining in the EEZ too.

For deep-sea mining in international waters beyond the EEZs, known as the "**Area**", the UN Convention on the Law of the Sea (**UNCLOS**) has established the applicable legal and regulatory framework.<sup>[2]</sup> UNCLOS is designed to ensure equitable access to resources, protect the environment, and facilitate responsible exploitation of the seabed.<sup>[3]</sup>

Under UNCLOS, the Area and its resources are described as the "*common heritage of mankind*" and the Area's minerals are only to be "*alienated*" in accordance with Part XI of UNCLOS and the "*rules, regulations and procedures of the [International Seabed Authority]*".<sup>[4]</sup> The International Seabed Authority (**ISA**) is an intergovernmental agency and comprises 168 member States and the EU. Whilst the US is not a full member of the ISA (as it has not ratified UNCLOS), it has historically participated as an observer at the ISA. Further, much of UNCLOS is recognized by the US as reflecting customary international law.

The ISA is mandated under UNCLOS to issue rules, regulations and procedures with respect to the exploration and exploitation of minerals in the Area.<sup>[5]</sup> At present, pursuant to regulations issued by the ISA, 31 exploration contracts have been approved, which largely concern the "Clarion-Clipperton Zone"—a 6 million km<sup>2</sup> area in the Pacific, between Hawaii and Mexico. With respect to exploitation, however, no regulations have yet been issued (and, accordingly, no contracts approved)—therefore deep-sea mining in international waters remains forbidden under UNCLOS.

In recent years, however, the ISA has faced increasing pressure to finalise regulation on deep-sea mining. On 25 June 2021, the island nation of Nauru notified the ISA of its plans to begin deep-sea mining in international waters and triggered an UNCLOS treaty provision known as the

“two-year rule”. This rule requires the ISA to “*nonetheless consider and provisionally approve*” a plan for exploitation of deep-sea minerals in circumstances where ISA exploitation regulations have not yet been issued. On 21 July 2023 (i.e., the end of the two-year period), ISA delegates agreed to extend the deadline for the finalisation of the plan for exploitation to July 2025 (a further two-year extension). The ISA’s 30th session is currently in progress—though it is unlikely that regulations will be finalized during that meeting.

### **The Executive Order**

As the Executive Order recognizes, critical minerals (such as nickel, cobalt, copper, manganese and titanium) and rare earth elements are crucial to a range of sectors—including energy, infrastructure and defence. China dominates both the production and processing of minerals—accounting for 61% of global mined rare earth production and controlling over 90% of the processing.<sup>[6]</sup> For the US, therefore, deep-sea mining presents an opportunity to reduce dependence on foreign suppliers such as China, creating its own supply chain.

The Executive Order requires, within 60 days of its issuance, the Secretary of Commerce to: (i) expedite the process for reviewing and issuing seabed mineral exploration licenses and commercial recovery permits in areas beyond national jurisdiction under the Deep Seabed Hard Mineral Resources Act 1980; and (ii) in coordination with the Secretary of the Interior and the Secretary of Energy and others, provide a report identifying private sector interest and opportunities. The National Oceanic and Atmospheric Administration under the Department of Commerce (which is responsible for issuing licenses for exploration and permits for commercial recovery under the Deep Seabed Hard Mineral Resources Act) has recently proposed rules that outline the licensing process. It has also started a consultation process, set to end by September 2025.<sup>[7]</sup>

Additionally, the Secretary of the Interior is required to establish an expedited process for reviewing and approving permits for prospecting and granting leases for the exploration, development, and production of seabed mineral resources within the United States Outer Continental Shelf. The Secretary of the Interior is also required to identify which critical minerals may be derived from seabed resources, so that it can indicate the critical minerals that are essential for applications, such as defense infrastructure, manufacturing and energy.

### **Responses to the Executive Order and Deep-Sea Mining**

Both China and the EU have questioned the legality of the Executive Order, arguing that it circumvents cross-nation negotiations and the approval processes under international law, for deep-sea mining in international waters, which must involve the ISA under UNCLOS. Following the Executive Order, at the UN Ocean Conference in June 2025 (previously reported on [here](#)), a number of States—including France, Spain and the United Kingdom—joined a group of (now) 37 States calling for an outright ban, moratorium or precautionary pause on deep-sea mining. Concerns expressed by those States include environmental impacts (such as the release of toxins into the ocean, noise pollution and the loss of biodiversity), risks to global food security and the acceleration of rising temperatures.

Notably, commercial appetite for deep-sea mining remains relatively low—with some major financial institutions having announced that they would not fund deep-sea mining projects, including due to uncertainties around costs and the concerns around environmental impacts, with others committing to avoid ocean-minded minerals in their products.

### **What the Future Holds for Deep-Sea Mining**

The Executive Order has changed—and will continue to shape—the course of the international debate on deep-sea mining. Although serious concerns remain about its environmental effects, for those States that consider deep-sea mining as an opportunity to unlock critical resources as a matter of national security, and to reduce dependence on foreign suppliers, the Executive Order may set a precedent for other States to follow suit. By setting its own standards, the US could prompt other countries to do the same, undermining long-standing international cooperation and desire to build a global regulatory regime that will protect the fishing industry, the ocean ecosystem and responsible mining standards.

Investors should therefore carefully assess the risks involved—whether that is uncertainty around licensing and the regulatory environment, increased costs and/or concerns with respect to environmental impacts of deep-sea mining. In circumstances where deep-sea mining in the Area is considered to be a violation of international law, investors need to carefully assess how their investments may be impacted.

Alongside domestic and contract-based remedies, it is possible that investor-State arbitration may offer a mechanism for deep-sea mining investors to protect their investments, to the extent their operations and exploration licenses are impacted by UNCLOS-based challenges emanating from international law or environmental considerations. Investors will need to think carefully about claims that involve investments and operations in the Area potentially outside a sovereign State's national jurisdiction.

Moreover, there are also, potentially, ESG and environmental litigation related risks for investors, where they are subject to due diligence obligations under domestic laws and there arises—as a result of mining operations—harm to the marine environment. ESG litigation with an environmental nexus has rapidly increased over recent years across the globe.

Finally, State-to-State disputes may ensue under the UNCLOS regime in relation to *inter alia* maritime boundaries, resource ownership, subsea cables and fishing rights which could have a direct and / or an indirect impact on the viability of a mining project and should be considered carefully.

Gibson Dunn's Geopolitical Strategy and International Law team—together with our International Arbitration, and ESG Risk Advisory teams—can help investors understand and navigate these multi-dimensional risks.

Should you wish to discuss the contents of this alert, do not hesitate to reach out to Patrick Pearsall, Lindsey Schmidt, Ceyda Knoebel and Stephanie Collins.

[1] See 'Unleashing America's Offshore Critical Minerals and Resources', *The White House*, 24 April 2025, <<https://www.whitehouse.gov/presidential-actions/2025/04/unleashing-americas-offshore-critical-minerals-and-resources/>>, last accessed 18 July 2025.

[2] See UNCLOS, Art. 1.

[3] See UNCLOS, Preamble.

[4] UNCLOS, Arts. 136-37.

[5] See UNCLOS, Arts. 162, 164-65.

[6] See 'Global Critical Minerals Outlook 2024', *International Energy Agency*, May 2024, <<https://www.iea.org/reports/global-critical-minerals-outlook-2024>>, last accessed 18 July 2025.

[7] <https://www.federalregister.gov/documents/2025/07/07/2025-12513/deep-seabed-mining-revisions-to-regulations-for-exploration-license-and-commercial-recovery-permit>.

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Geopolitical Strategy & International Law or International Arbitration practice groups:

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