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Navigating the Legal Framework for US Offshore Mining Activities in the Wake of Trump's Executive Order

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Brooklyn Hildebrandt

Brooklyn Hildebrandt (L) and Peter Whitfield (R) of Sidley Austin. Courtesy photos.

On April 24, 2025, the president issued an executive order titled "Unleashing America's Offshore Critical Minerals and Resources," aimed at accelerating the development of deep seabed mining in areas within and beyond U.S. jurisdiction. Deep seabed mining (DSM) involves extracting mineral nodules—such as cobalt, nickel and manganese—from the ocean floor, with the industry's current focus on the Clarion-Clipperton Zone (CCZ) and areas offshore American Samoa in the Pacific Ocean.

The executive order is bold not because it seeks to strengthen American energy independence and secure access to critical minerals with a nascent technology, but because it purports to authorize activity both within the United States' exclusive economic zone and in international waters beyond U.S. jurisdiction. In doing so, the executive order advances U.S. authorization of DSM in international waters ahead of the International Seabed Authority's (ISA) finalization of a long-delayed regulatory framework. The U.S. legal framework, the Deep Seabed Hard Mineral Resources Act (DSHMRA), although enacted nearly 40 years ago, has never been used to authorize mineral extraction. Now all eyes are on the United States while we await the substance of the first authorization of commercial extraction activities. This authorization undoubtedly will result in litigation and present novel legal questions for courts to resolve. Potential applicants will need to stay vigilant in understanding the DSHMRA's legal framework and associated legal risks.

International Framework

DSM in areas beyond national jurisdiction operates in a legal environment shaped by international law—primarily the United Nations Convention on the Law of the Sea (UNCLOS) and its implementing institution, the ISA. While the United States is not a party to UNCLOS, many of its principles, including the "common heritage of humankind" designation for the deep seabed, reflect customary international law.

The significance of designating an area as the common heritage of humankind is that it must be managed through international cooperation for the benefit of all nations and prohibits a country from unilaterally exploiting resources beyond its jurisdiction, requiring international cooperation and oversight from international bodies like the ISA. But despite decades of effort, the ISA has yet to finalize a comprehensive regulatory framework governing the exploitation of seabed minerals. Over 30 countries—including Canada, Germany, and the United Kingdom—have since called for a moratorium on deep-sea mining activities, citing environmental and scientific uncertainties. Unsurprisingly, the United States is not among them.

In the legal vacuum created by the absence of any binding ISA rules and the international stalemate, unilateral action by a country such as the United States to license DSM activities in areas beyond national jurisdiction presents myriad risks. Countries already leading the minerals race like China and Japan may move to compete for these same resources. Alternatively, opponents like those calling for a moratorium may seek to preserve the status quo and pursue international litigation or otherwise threaten or impose retaliatory measures such as sanctions and trade or port access restrictions.

US Framework—Deep Sea Bed Activities

Acknowledging this potential for an international shortcoming, Congress enacted DSHRMA in 1980, to preemptively fill this legal void and protect U.S. interests in these resources. It serves as the operative legal basis for U.S. entities seeking to engage in DSM within and beyond national waters, particularly in the absence of an international framework. Under DSHMRA, U.S. entities must secure from the National Oceanic and Atmospheric Administration (NOAA) a license for exploration (for surveys, environmental studies, and research) or a permit for commercial recovery (for full-scale extraction and processing of seabed minerals).

Of the two, a permit application imposes more demanding requirements, typically based on the exploration-phase data, indicating the license is a prerequisite for a permit. These include a detailed resource recovery plan, environmental safeguards, and evidence that the applicant is ready to proceed with commercial operations, including the recovery and processing of minerals using a U.S.-flagged vessel and at a domestic U.S. facility. To issue a permit, NOAA must find that the activity:

- will not unreasonably interfere with the exercise of the freedoms of the high seas by other states, as recognized under general principles of international law;
- will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States;
- will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict;
- cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable environmental impact statement prepared pursuant to Section 1419(c) or 1419(d) [of the DSHMRA]; and
- will not pose an inordinate threat to the safety of life and property at sea.

NOAA must also ensure that an applicant is financially and technologically capable of meeting obligations to engage in commercial recovery operations.

Beyond DSHMRA, NOAA must comply with other federal statutes as part of the permitting process. The statute specifically states that permitting triggers an obligation under the National Environmental Policy Act (NEPA) to prepare an environmental impact statement, despite NEPA itself excluding extraterritorial activities. Other applicable laws imposing additional obligations may include the Endangered Species Act (ESA), which prohibits take of protected, the Marine Mammal Protection Act (MMPA), which prohibits harm to marine mammals without authorization, and the Clean Water Act (CWA), which requires permits for discharges from vessels or processing facilities.

To date, NOAA has issued four exploration licenses under DSHMRA—only two of which remain active—and not a single commercial recovery permit. Consequently, no U.S. entity has been authorized to extract deep seabed minerals at a commercial scale.

US Framework—Outer Continental Shelf Activities

In addition to DSHMRA, the Department of Interior (DOI) under the Outer Continental Shelf Lands Act (OCSLA), may issue leases and authorize offshore mineral development in areas of the United States' outer continental shelf. Through this process is separate from the licensing and permitting under DSHMRA, many of the same environmental reviews apply. On June 25, 2025, the DOI announced a new policy to fast-track and streamline the approval and permitting process for offshore critical minerals and to extend the duration of prospecting permits from three to five years. DOI estimates that its expedited procedures could save from two months to a year off of the review process. While analysis of the OCSLA framework is beyond the scope of this article, we note many of the same issues may arise.

Litigation and Other Risks for US Companies

DSHMRA provides a private right of action allowing any person to bring a civil suit against NOAA or a license or permit holder for alleged violations of the statute seeking equitable relief (e.g., injunction to halt exploration or commercial recovery operations). Claims could include an operator exceeding the scope of its approved plan or failing to comply with environmental monitoring or reporting obligations, or that the permit is contrary to international law, among others.

Given the procedural complexity of the permitting process and lack of judicial precedent interpreting DSHMRA, legal and political scrutiny is likely. This scrutiny is compounded by the fact that key statutory standards remain poorly defined and untested. For example, the statute imposes a notably nebulous threshold for environmental certification, requiring NOAA to determine that the proposed activity will not pose a significant *adverse* effect on the environment. Because Congress deemed the issuance of a permit a "major Federal action significantly affecting the quality of the human environment" under NEPA, it suggests that a significant *adverse* effect must be some degree different. NOAA defines and sets parameters for judging what constitutes a "significant adverse environmental effect," but ultimately defers discretion to the Administrator to determine "the potential for or the occurrence of any significant adverse environmental effect or impact . . . on a case-by-case basis.," 15 C.F.R. Sections 971.101(s), 602(a). Thus, legal challenges are likely to raise novel issues and questions of first impression, particularly around competing DSHMRA and NEPA standards and the application of DSHMRA's permitting regime. And the absence of judicial precedent interpreting DSHMRA and the unavailability of *Chevron* deference to

agency interpretations only increases the legal uncertainty. While similar suits have been successful in slowing resource development projects, such a challenge will also test the limits of the Supreme Court's most recent NEPA decision, which narrowed the scope of an agency's NEPA obligations and admonished courts to be deferential to agency decisions under that statute. See *Seven County Infrastructure Coalition v. Eagle County, Colorado*, No. 23-975 (2024).

Permitting decisions will also likely face legal challenges pursuant to the Administrative Procedure Act (APA), which provides a broad avenue for such litigation and allows virtually any interested party to challenge NOAA's issuance of a license or permit on procedural or substantive grounds.

Market access and consumer trust may pose additional risk for U.S. DSM. Consumers are increasingly attentive to a product's environmental and ethical origins, driving a broader shift toward responsible sourcing. Several major brands and manufacturers—including automakers and technology companies—currently have adopted policies to avoid using minerals extracted from sensitive regions such as the CCZ to protect their reputations, mitigate backlash, and maintain brand integrity. And countries have similarly restricted business (e.g., China's "unreliable entity list," which retaliates against companies allegedly undermining its national sovereignty, security, and development interests). Thus, companies engaged in DSM—or those financing or supplying them—could face diminished commercial opportunities, strained business relationships, and increased scrutiny from investors, business partners and consumers.

Conclusion: Permitting With Litigation in Mind

While President Donald Trump's executive order signals renewed interest in DSM, it cannot shield stakeholders and agencies alike from the accompanying regulatory and legal risks.

Applicants must navigate a highly complex and untested domestic permitting regime under DSHMRA and prepare to meet numerous environmental and procedural safeguards, including NEPA and other environmental statutes that may not apply extraterritorially but for the commands of DSHMRA. Applicants will need to scrupulously meet statutory criteria and build a robust administrative record to minimize litigation risk and survive legal challenge.

At the same time, policymakers should prepare to clearly articulate the U.S. government's legal position on international obligations—particularly as they relate to UNCLOS and the common heritage of humankind—to strengthen the legitimacy of any permitting decisions and reduce uncertainty for operators in international waters. Ultimately, applicants navigating this permitting scheme should take note that a policy decision by one administration is not a free pass; success likely requires a comprehensive and conservative approach to ensure legal defensibility at every stage.

Peter Whitfield *is a partner in the Washington, D.C. office of Sidley Austin where he assists his clients with environmental issues prior to, during, and after project development and operation. He helps companies navigate citizen suits, enforcement actions, regulatory proceedings, and challenges to their environmental clearances. Whitfield also handles a variety of administrative litigation matters on behalf of clients.* **Brooklyn Hildebrandt**, *senior managing associate in the firm's Los Angeles office, focuses her practice on litigation and project development.*