Deep-Sea Mining Year in Review: The United States Executive Order 14285 and the Revival of DSHMRA

By Louise Woods and Elena Guillet

In this second insight of our series, we examine the most dramatic shift of the past couple years: the United States' re-entry into deep-sea mining. Through an executive order, an overhaul of the National Oceanic Atmospheric Administration ("NOAA")'s regulations and a first wave of applications led by The Metals Company, a U.S. statute dormant for four decades has become a live and increasingly attractive pathway to commercial recovery. We consider each of these developments, the parallel activity on the U.S. Outer Continental Shelf and in domestic processing, and the legal and policy tensions that the U.S. approach has created with the multilateral regime.

Executive Order 14285 "Unleashing America's Offshore Critical Minerals and Resources"

President Trump issued Executive Order 14285 ("EO 14285") on 24 April 2025, establishing policies to advance U.S. leadership in seabed mineral recovery. The Executive Order aims to revive the Deep Seabed Hard Minerals Resources Act ("DSHMRA") and encourage mining for critical minerals in areas beyond national jurisdiction, with the goal of increasing domestic energy security by relying less on foreign sources. The Executive Order specifically directed NOAA to implement an expedited process for reviewing and issuing exploration licences and commercial recovery permits.

The policy objective is plain: to position the United States to access deep-sea critical minerals outside the international framework. The United States, which has signed but not ratified the United Nations Convention on the Law of the Sea ("UNCLOS"), has long had its own framework under DSHMRA, administered by NOAA, which may issue exploration licences and commercial recovery permits to U.S. citizens and U.S.-controlled companies. DSHMRA was first established to bridge the gap until UNCLOS was finalised and ratified. Historically, NOAA issued four exploration licences in the early 1980s (though two have been since relinquished) and has never issued a commercial recovery permit.

The Executive Order also directed the Department of the Interior and the Bureau of Ocean Energy Management ("BOEM") to develop processes for seabed mineral activity on the Outer Continental Shelf under the Outer Continental Shelf Lands Act ("OCSLA"), and engaged the State Department on international cooperation.

NOAA's Consolidated Application Rule

NOAA proposed revisions to its DSHMRA regulations on 7 July 2025, inviting comment through 5 Sept. 2025, and published the final rule on 21 Jan. 2026 without substantive changes to the proposal. The rule provides an alternative to the sequential two-step process: the exploration licence, followed later by a separate commercial recovery permit,

with an optional single, consolidated application, a measure NOAA had anticipated when it first promulgated the regulations in the 1980s.

The consolidated process is intended for applicants that have developed

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sufficient technical, environmental and financial information to support review of both phases concurrently. NOAA emphasized that consolidation is procedural and does not alter statutory eligibility requirements or substantive review standards. Key features of the consolidated process include a single comprehensive review resulting in separate but simultaneous decisions on the licence and permit, the possibility of a single Environmental Impact Statement ("EIS") covering both exploration and recovery (although NOAA may prepare successive EISs on a case-by-case basis), concurrent issuance securing the applicant's priority of right and unchanged terms of 10 years for exploration licences and 20 years for commercial recovery permits. Applications must include, among other things, exploration and commercial recovery plans, statements of financial resources and technological capabilities, an environmental and use conflict analysis and a USD $350,000 fee alongside a full technical description of the mining process from collection through processing and waste disposal at the outset.

There are some uncertainties with the consolidated rule: the extent of exploration still required under the consolidated route given the continuing "diligence" obligation in 15 CFR § 970.602, the nodule-centric drafting, which does not comfortably accommodate other seabed minerals such as cobalt-rich crusts or seafloor massive sulphides, and NOAA's forecast of applicant numbers, which may reflect the Trump Administration's optimism.

The Metals Company USA Applications – A Test Case

TMC USA LLC submitted two exploration licence applications (USA-A and USA-B) for areas in the Clarion-Clipperton Zone ("CCZ") on 29 April 2025. NOAA publicly noticed receipt on 23 Dec. 2025, and on 22 Jan. 2026, the day after the introduction of the consolidated rule, TMC announced it had requested consolidated processing.

The consolidated application covers approximately 65,000 km² in the CCZ, with an estimated resource of 619 million tonnes of wet polymetallic nodules, and overlaps with the NORI and TOML (TMC's subsidiaries) International Seabed Authority ("ISA") contract areas. NOAA found the consolidated application in substantial compliance on 9 March 2026, the first under the streamlined process, and certified the consolidated application on 26 May 2026. These are intermediate milestones that do not themselves authorise any exploration or mining. The public comment period on the consolidated application ended on 19 Oct. 2026 and NOAA held a virtual public hearing on 13 Oct. 2026.

Next steps under NOAA's regulations include certification (targeted within 100 days of full compliance), publication of draft terms, conditions and restrictions within 180 days of certification and likely with a draft EIS, a further comment period of at least 60 days with a mandatory hearing, completion of consultations under the Endangered Species Act, Marine Mammal Protection Act and other statutes, and a final EIS within 180 days of the draft.

The hearings on the two exploration licence applications offered a first look at public sentiment. Most commenters opposed deep-sea mining and called for adherence to a moratorium, citing incomplete science, sediment plumes and emerging research on "dark oxygen". Others supported the industry as environmentally preferable to terrestrial mining and beneficial to national security. Commenters also raised security-of-tenure risk (nothing prevents the ISA from reissuing overlapping areas to another contractor) as

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well as calls for enforceable financial assurance and criticism that underlying NOAA–TMC correspondence had not been released.

Commercial interest is broadening. NOAA's website suggests that it has received around 10 applications following EO 14285.

BOEM and Outer Continental Shelf Developments

While NOAA's DSHMRA process looks to the high seas, a second U.S. pathway to offshore critical minerals lies closer to home: the federally managed Outer Continental Shelf ("OCS"). Under the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. §§ 1331–1356c), the Department of the Interior ("DOI") may lease areas of the OCS for offshore energy and non-energy marine minerals, including critical minerals. This is a domestic leasing regime, entirely separate from NOAA's jurisdiction beyond U.S. waters, and not an assertion of rights in the Area. DOI has historically acted through the Bureau of Ocean Energy Management ("BOEM"). BOEM is now being merged with the Bureau of Safety and Environmental Enforcement into a new DOI Marine Minerals Administration, a consolidation that itself signals the Administration's priorities.

The pace has been striking. In American Samoa, Impossible Metals requested a lease sale on 8 April 2025. Within 18 months, the process moved through several stages:

- DOI's announcement of an evaluation (20 May 2025);
- A BOEM Request for Information and Interest (16 June 2025);
- Identification of an 18-million-acre area for possible leasing (10 Nov. 2025);
- A NOAA hydrographic survey to map deposits under EO 14285 (announced 22 Jan. 2026);
- A proposed leasing notice for a sale of approximately 31 million acres in November 2026, which would be the first U.S. seabed critical minerals lease sale under OCSLA.

BOEM has followed a similar path elsewhere. In the Commonwealth of the Northern Mariana Islands, a public comment process opened on 12 Nov. 2025 and some 69 million acres were identified for leasing on 18 March 2026. That area includes waters adjacent to the Mariana Trench Marine National Monument, which is likely to draw scrutiny. Requests for Information followed for 114 million acres of the Alaskan OCS on 29 Jan. 2026 and for 1.7 million acres offshore Virginia on 23 June 2026, extending the programme to the Atlantic. With processes now spanning more than 200 million acres, the OCS is emerging as a parallel, and arguably less contested, route to U.S. seabed minerals. Because these areas lie within national jurisdiction, it avoids the questions of international legitimacy that surround DSHMRA licences in the Area. It also reaches resources, such as cobalt-rich crusts, that DSHMRA does not cover. Prospective lessees should now watch the terms of the first lease sale, BOEM's environmental analyses and how the Marine Minerals Administration will approach permitting.

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Legal and Policy Tensions: Navigating the Risks of the U.S. Routes

The U.S. pathway is moving faster than the ISA's negotiations, but speed is not the same as security. Companies seeking U.S. authorisation face significant legal risk, whether they pursue a DSHMRA licence for the Area or an OCSLA lease within U.S. waters. That risk arises under U.S. domestic law and under international law. None of these risks are insurmountable. Each can be identified early, priced and, in most cases, mitigated through careful structuring, record-building and planning.

Both U.S. routes engage the full suite of U.S. environmental law and an experienced litigation community. DSHMRA's private right of action (30 U.S.C. § 1427) lets affected parties sue NOAA or permit holders to enforce DSHMRA's bar on approving activity that would cause significant adverse environmental effects, interfere with high seas freedoms or conflict with U.S. treaty obligations (30 U.S.C. § 1415). On both routes, the National Environmental Policy Act ("NEPA") allows any environmental impact statement, including BOEM's analyses for American Samoa and the Northern Mariana Islands, to be challenged for failing to take a 'hard look' at impacts, alternatives or cumulative effects.

This risk is no longer hypothetical. On 30 Sept. 2026, the Centre for Biological Diversity and the Conservation Council for Hawai'i sued NOAA in the District of Hawai'i. They seek to vacate its 26 May 2026 certification of TMC USA's exploration licence application on the ground that relevant materials were withheld during public comment. The suit offers a preview of the type of litigation that future licences, permits and leases can expect. Notably, it targets the agency's process rather than the merits of mining, which underlines that much of this risk is procedural and can be managed.

Applicants can do much to reduce this exposure. Litigation risk is lowest where the administrative record is strongest. That means investing early in robust environmental baseline data and impact modelling that address the DSHMRA "significant adverse effect" standard and NEPA's 'hard look' requirement directly, engaging constructively with NOAA or BOEM on the scope of environmental review and on mitigation conditions and building a transparent consultation record. This includes parties including with fishing interests, Pacific Island communities and coastal states, so that procedural challenges similar to the ones currently before the Hawai'i court have less to attach to.

For DSHMRA operators in the Area, the greatest risks lie wherever a project touches one of the 172 UNCLOS member states. Under Article 139 of UNCLOS, those states must ensure that their nationals do not operate in the Area outside Part XI. A state that permits its nationals to participate in U.S.-authorised mining risks claims for damages, ISA action against contractors it sponsors and market exclusion under Article 137. In practice, this exposure reaches across the value chain. Classification societies based in UNCLOS states may refuse to class mining vessels. Flag and port states could deny support or access. Partners already face political pressure: Switzerland and the Netherlands have both signalled concern about companies partnering with TMC. Buyers in the European Union, Japan and South Korea may face limits on purchasing minerals recovered outside the ISA system. Despite the Administration's efforts to make the industry U.S. centric, few operations could avoid all contact with UNCLOS states.

These risks can be mapped and managed. A project-specific exposure assessment that traces each vessel, contractor, insurer, lender, processor and off-taker to

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its jurisdiction will show where UNCLOS obligations bite and where alternatives exist. Corporate groups holding both ISA contracts and U.S. rights should review their structures, sponsorship agreements and data-sharing arrangements, given the questions raised by the ISA's compliance inquiry. Commercial contracts can allocate the resulting risk through (i) change-in-law, regulatory-event and termination provisions; (ii) conditions precedent tied to classification and flag approvals; and (iii) offtake terms that address market-access restrictions. Financing and insurance structures can be built around those lenders and underwriters prepared to support the sector, with ESG and disclosure strategies prepared from the outset. Finally, well-drafted dispute resolution clauses and an early assessment of available forums, including international arbitration and any treaty protections, can preserve remedies if a state or counterparty acts against the project.

The OCS route is on firmer ground. Because BOEM leases lie within U.S. jurisdiction, they do not engage Part XI of UNCLOS or the common heritage principle. They remain exposed, however, to the same domestic litigation and to the same commercial constraints on vessels, insurers, financiers and reputation. For many participants, that may make the OCS an attractive entry point, provided that environmental review and stakeholder engagement are approached with the same rigour as in the Area.

The past year has turned DSHMRA from a historical curiosity into a functioning, if not yet fully tested, permitting regime with a new OCS leasing programme. However, no licence or permit has yet been issued and the first lawsuit has already been filed. For companies weighing the U.S. route, the central risks are legal fragility, security of tenure where areas overlap with ISA contracts and access to the partners, insurers, financiers and markets needed to bring a project from licence to sale. Those risks lead directly to our first insight: the ISA's efforts to finalise the rules for exploitation in the Area.

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