

---

## Deep sea mining: navigating in murky waters

---



On 9 July 2023, the latest deadline for finalising the draft exploitation regulations for deep sea mining in international waters expired without agreement.<sup>1</sup> This deadline resulted from a letter from the pacific state of Nauru in 2021 stating an intention to apply for approval of a ‘plan of work’ for exploitation of deep sea minerals. The letter triggered a sub-clause within the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, (the “**1994 Implementing Agreement**”) which gave the International Seabed Authority (“**ISA**”) Council two years to complete the adoption of the rules, regulations and procedures (“**RRPs**”) for exploitation of the seabed (“**the two-year rule**”).<sup>2</sup> If such RRP were not adopted, in theory, the ISA Council were to consider and provisionally approve such plan of work based on the provisions of the United Nations Convention of the Laws of the Sea (“**UNCLOS**”) and any rules that the ISA Council may have provisionally adopted.<sup>3</sup>

Understandably, this requirement and the deadline played a central role in the ISA’s 28th session, held in Kingston, Jamaica from 28 June to 28 July 2023 (the “**Meeting**”).<sup>4</sup> Although the RRP were not agreed at the Meeting, the ISA Council expressed its intention to continue developing the RRP with a view to their adoption during the 30th ISA assembly in 2025.<sup>5</sup> Furthermore, the ISA Council clarified that if an application for a plan of work for exploitation is submitted before the adoption of the RRP, the Council will address the implications of the two-year rule as a matter of priority with a view to reaching a decision at its first subsequent meeting.<sup>6</sup> The outcome of the Meeting is continued uncertainty about the way forward when it comes to deep sea mining in international waters.

At the Meeting, countries such as Canada and Brazil joined the call for a precautionary pause on commercial deep sea mining, which brings the total number of such states to 21 (including Ireland, Finland, Portugal and Sweden).<sup>7</sup> These calls are largely due to concerns that not enough is known about the effect of deep sea mining on the environment and the need for a clear and robust regulatory framework underpinning the sector. Germany stressed the need for greater research, and Chile emphasised the need for scientific certainty.<sup>8</sup> Elsewhere, in January 2023, France voted in favour of a ban on deep sea mining in its waters, a position reiterated on a global level at the ISA negotiations held in July 2023.<sup>9</sup> In the UK, at least 22 Members of Parliament have backed a moratorium on deep sea-mining.<sup>10</sup> Despite the UK government’s sponsorship of two exploration licences in the Pacific Ocean, its approach has been cautious to date.

---

<sup>1</sup> [Summary report 10–28 July 2023 \(iisd.org\)](#)

<sup>2</sup> [Agreement on Part XI UNCLOS](#), Section 1, clause 15(b)

<sup>3</sup> [Agreement on Part XI UNCLOS](#), Section 1, clause 15(c)

<sup>4</sup> [Summary report 10–28 July 2023 \(iisd.org\)](#)

<sup>5</sup> [Ibid.](#)

<sup>6</sup> [Ibid.](#)

<sup>7</sup> [Ibid.](#)

<sup>8</sup> [Ibid.](#)

<sup>9</sup> <https://www.euronews.com/green/2023/01/18/france-votes-to-ban-deep-sea-mining-in-its-waters-why-is-this-practice-so-controversial>

<sup>10</sup> <https://www.ft.com/content/32598cb2-c795-4a3b-8f1b-aa87a34191ef>

On the other hand, Nauru has already expressed its intention to sponsor a commercial mining licence.<sup>11</sup> Norway is also in favour of granting exploitation licences and has been developing their own regulations for seabed mining, as covered in our [previous article](#).<sup>12</sup> Other countries such as India and China have expressed their support for deep sea mining to be approved, with China in particular expressing its concern over a lack of clear commitment towards finalising the exploitation regulations.<sup>13</sup>

Clearly, a global consensus remains a distant prospect. On the one hand, countries are aware of the need to source critical raw minerals for use in electronics and battery technologies needed for the energy transition. As covered in our [previous article](#), the polymetallic nodules located at the bottom of the seabed are rich in nickel, copper, cobalt, and manganese, among other metals. On the other hand, concerns have been raised over the potentially damaging and little-known effects of deep sea mining on aquatic life and ocean ecosystems.<sup>14</sup> It is clear that more discussion and greater investment into research in the sector will be required before a consensus can be achieved.

## What does this mean for the future?



While deep sea mining has been hotly debated since the 1960s, the subject has rightly received renewed interest following the Meeting. Importantly, questions as to whether enough is known about the sector and whether the benefits to humankind outweigh the potential pitfalls have been raised and will need to be addressed. This will no doubt continue now that the deadline to agree the RRP has been extended to July 2025 and a roadmap for continued work in developing the RRP has been outlined, with discussions continuing for the rest of 2023 and into 2024.<sup>15</sup> Given widespread resistance, it is likely that any progress towards commercial deep sea mining will be incremental and require further research into its environmental impacts and optimal technologies.



**Ted Rhodes**  
Partner

T +44 20 7367 3974  
E [ted.rhodes@cms-cmno.com](mailto:ted.rhodes@cms-cmno.com)



**Firas Albani**  
Senior Associate

T +44 20 7367 2643  
E [firas.albani@cms-cmno.com](mailto:firas.albani@cms-cmno.com)



**Rachel Strickland**  
Trainee Solicitor

T +44 20 7367 2069  
E [rachel.strickland@cms-cmno.com](mailto:rachel.strickland@cms-cmno.com)

<sup>11</sup> [Summary report 10–28 July 2023 \(iisd.org\)](#)

<sup>12</sup> [Deep sea mining: Here's which countries oppose and support the controversial practice | Euronews](#)

<sup>13</sup> <https://www.theguardian.com/environment/2023/jul/29/deep-sea-mining-international-talks-isa-jamaica>; [Summary report 10–28 July 2023 \(iisd.org\)](#); [India: Minerals in Indian Ocean can turn India self-sufficient in nickel, cobalt: International Seabed Authority chief - The Economic Times \(indiatimes.com\)](#); [India launches deep-sea mining project to develop 'blue economy' \(lemonde.fr\)](#)

<sup>14</sup> <https://www.ft.com/content/14cf08b0-f645-4030-8fe9-370d46a75558>

<sup>15</sup> [Summary report 10–28 July 2023 \(iisd.org\)](#)