



The Deep Sea Mining Bill 2013-14

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Mrs Sheryll Murray MP, who came fourth in the ballot for Private Members' Bills, has introduced the [Deep Sea Mining Bill \(HC Bill 14\)](#). This is a Government 'handout' Bill; the Foreign and Commonwealth Office has prepared its explanatory notes.

The Bill seeks to amend the *Deep Sea Mining (Temporary Provisions) Act 1981*. This will ensure that companies seeking to exploit mineral resources of the deep sea bed obtain licences from and are regulated through the International Seabed Authority, in line with the UN Convention on the Law of the Sea.

Also, at the moment, the 1981 Act applies only to polymetallic nodules, not to other mineral resources of the deep sea bed. The Bill is due to receive its second reading on Friday 6 September 2013.

The Bill is due to have its report stage on the 24 January 2014.

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1 Bill documents

The [Deep Sea Mining Bill 2013-14](#) had its first reading in the House of Commons on [19 June 2013](#). It completed its committee stage on [15 January 2014](#), had its second reading debate on [6 September 2013](#).

The Bill's progress can be tracked on its Parliament [Bill web page](#). Its [Explanatory Notes](#), prepared by the Foreign and Commonwealth Office, are also available on these pages.¹

2 The UN Law of the Sea

The [1982 UN Convention on the Law of the Sea](#) (UNCLOS) was a consolidation of earlier UN Conventions on territorial rights over states' territorial seas, boundaries, and rights of passage on the high seas. It came into force in 1994 and has been ratified by the UK², with some provisos.³

Under UNCLOS, coastal states have sovereignty over their territorial sea (up to 12 nautical miles) but foreign vessels are allowed "innocent passage" through those waters. UNCLOS also allows for boundaries between adjacent states and sovereign rights in a 200-nautical mile exclusive economic zone (EEZ) regarding natural resources and some economic activities. In the EEZ they also have jurisdiction over research and environmental protection.

Coastal States also have sovereign rights over the continental shelf (the national area of the seabed) for exploring and exploiting it, and this can be "at least 200 nautical miles from the shore, and more under specified circumstances". UNCLOS gives states a duty to prevent and control marine pollution; they become liable for damage caused by violation of their international obligations to combat such pollution.

Beyond the EEZs, on the high seas, all States have freedom of navigation, overflight, scientific research and fishing.

UNCLOS established some international bodies; it allows for disputes to be submitted to the International Tribunal for the Law of the Sea, to the International Court of Justice, or to arbitration. Conciliation is available and can be made compulsory.

Under the Convention, the International Tribunal for the Law of the Sea has exclusive jurisdiction over deep seabed mining disputes.⁴

2.1 Deep seabed mining under UNCLOS and the International Seabed Authority

Part XI of the Convention dealt with seabed mining provisions which were controversial and for some time prevented some states from ratifying.

Following much further negotiation, a further 1994 "Implementing Agreement relating to deep seabed mining" under Part XI allowed for an [International Seabed Authority](#) (ISA) to be established.⁵

The ISA has established a '[Mining Code](#)'. This includes all of its published rules and regulations under UNCLOS to regulate prospecting, exploration and exploitation of marine

¹ [Deep Sea Mining Bill Explanatory Notes Bill 14-EN](#), FCO, 2 September 2013

² http://www.un.org/Depts/los/reference_files/status2010.pdf

³ http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#UK Upon accession

⁴ http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm

⁵ http://www.un.org/Depts/los/convention_agreements/convention_overview_part_xi.htm

minerals in the international seabed 'Area'. (This is defined as the seabed and subsoil beyond the limits of national jurisdiction.)

The ISA has issued three sets of Regulations relating to three mineral types so far:

- Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (adopted 13 July 2000);
- Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (adopted 7 May 2010) and
- Regulations on Prospecting and Exploration for Cobalt-Rich Crusts (adopted 27 July 2012).

The Mining Code sets standard terms for any exploration contracts.⁶ The [standard information required in exploration applications](#) includes for example:

“a description of proposed measures for the prevention, reduction and control of pollution and other hazards, as well as possible impacts, to the marine environment”⁷

3 The Deep Sea Mining (Temporary Provisions) Act 1981

The *Deep Sea Mining (Temporary Provisions) Act 1981* was enacted before UNCLOS became available for signing in 1982.

It allows for licences for companies to explore for polymetallic nodules on the deep sea bed. Through these licences the UK can exercise control over the company concerned, meeting its obligations to do so under UNCLOS. The Act allowed for the UK and other countries to reach reciprocal agreements in relation to deep sea mining.

However, under UNCLOS now, regulation is enforced through the ISA; companies must enter into a contract with the ISA before exploring for or exploiting the mineral resources of the deep sea bed.

The Bill's explanatory notes explain that the ISA has now adopted regulations on minerals (listed above) which the 1981 Act does not cover.

In addition, the 1981 Act does not allow for the UNCLOS dispute procedures.

4 The current Bill's provisions

Clause 1 of the Bill first amends the 1981 Act to remove the 'temporary provisions' wording from its title.

Clause 2(1) sets extent; to England and Wales and Northern Ireland. Subsection (2) enables the Bill to be extended by Order in Council to the Channel Islands, Isle of Man or any overseas territory. The Bill will come into force two months after Royal Assent.

4.1 Schedule 1

The rest of the Bill's provisions are set out in its Schedule 1.

⁶ <http://www.isa.org.jm/en/mcode>

⁷ <http://www.isa.org.jm/files/documents/EN/Regs/Code-Annex2.pdf>

Paragraph 2 seeks to ensure that that exploring for or exploiting mineral resources in the deep sea bed requires an exploration or exploitation licence. This must relate to and stipulate specific mineral resources, and that particular area of the deep seabed.

Paragraph 2(3) amends the definition of "deep sea bed" to match that in UNCLOS; the area of the seabed beyond the limits of any State's national jurisdiction.

"Mineral resource" is defined as under UNCLOS and the word "hard" from the 1981 Act is omitted, to allow liquid or gaseous minerals to be the subject of licences.

Paragraph 3 seeks to ensure that exploration or exploitation licences are only valid if there is a contract between the International Seabed Authority and the Licensee concerned. It also sets out provisions which the Secretary of State may include in a licence. These include a requirement that the contractor comply with the Convention and other international rules of the ISA, as well as its contract with the ISA and related plan of works.

Paragraph 4 replaces the 1981 Act's provisions relating to reciprocal recognition between the UK and reciprocating countries with the UNCLOS requirements relating to the Seabed Authority. It inserts new Sections 3A and 3B. According to the Bill's Explanatory Notes:

The new section 3B provides that a person who is merely prospecting, ie undertaking exploration for minerals on the seabed but without an exclusive right to do so, is not prohibited by the Act from carrying out that activity, provided that they have notified the Authority in accordance with its regulations.

In addition, under the new Section 3B persons who hold contracts for exploration or exploitation to carry out the activities provided for in those contracts are not prohibited by UK law from so doing.

Paragraph 8 allows for the enforcement of decisions of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea and the enforcement of arbitral awards made by a tribunal, applying the Arbitration Act 1996 to them.

Paragraph 9 repeals sections 9 and 10 of the 1981 Act. These provided for a Deep Sea Mining Levy and a Deep Sea Mining Fund, to operate on an interim basis until an international organisation dealing with deep sea mining had been established, and for sums to be paid to that organisation. However, these never operated.

Now, Part XI of UNCLOS allows for contractors to make direct payments to the ISA once exploitation of mineral resources commences. Companies will also have to pay fees to the Secretary of State for the issue of licences under the 1981 Act.

Paragraph 11 deals with definitions.

5 Background and comment on deep sea mining

The Library's standard note on [Deepwater and Arctic oil drilling](#) describes how previously inaccessible offshore hydrocarbons, including those at depth, are increasingly starting to be exploited. The note provides a background to the licensing regime for this.⁸

In March 2013 the Prime Minister said international seabed mining could be worth £40bn to the UK economy over the next 30 years. The *Guardian* article reporting his comments said that BIS had, with UK Seabed Resources (a subsidiary of Lockheed) obtained a licence and

⁸ 20 September 2012 House of Commons Library Standard note SN05981

contract to explore a 58,000 sq km area of the Pacific Ocean for “environmentally responsible collection” of polymetallic nodules. Science Minister David Willetts, who was also present, drew attention to UK expertise in underwater robotics and autonomous systems used on the UK continental shelf. The *Guardian* noted:

Currently the licence obtained from the International Seabed Authority (ISA) gives the UK government and Lockheed the right to explore but not extract, so a second licence would be required for that. And before any mechanical harvester is built, there will have to be a thorough environmental study, which could begin this summer.

[...]

Exploration outside 200-mile territorial waters can only be undertaken through application for a licence from the ISA, established under the United Nations law of the sea convention.

Russia recently signed a 15-year contract to prospect for metallic sulphides in the Atlantic, where volcanic hot springs create mineral-rich rock formations. Two applications for exploration were filed last summer for areas in the west Pacific Ocean, one from China and another from Japan.⁹

Greenpeace has drawn attention to a “rapid increase in license applications” to the International Seabed Authority to exploit mineral resources in international waters. Greenpeace says that “if seabed mining is allowed to go ahead without a comprehensive system of environmental protection in place we may be destroying species forever before they have even been scientifically described”.¹⁰

As noted above, information is required for the plan of works under the International Seabed Authority’s Mining Code in any exploration applications. This includes for example:

- A description of a programme for oceanographic and environmental baseline studies in accordance with the Regulations and any environmental rules, regulations and procedures established by the Authority that would enable an assessment of the potential environmental impact of the proposed exploration activities, taking into account any recommendations issued by the Legal and Technical Commission;
- a preliminary assessment of the possible impact of the proposed exploration activities on the marine environment;
- a description of proposed measures for the prevention, reduction and control of pollution and other hazards, as well as possible impacts, to the marine environment.

However, the ‘Deep Sea Mining Campaign’ lobbied a Deep Sea Mining conference in London during summer 2013. It has been highly critical of the ‘uncertainties around the environmental and social impacts’ of a Nautilus Minerals proposed project in Papua New Guinea territorial waters.¹¹

That project involves seafloor massive sulphides (SMS) forming an ore body close to hydrothermal vents at depths of 1,600m. A report in *Mining Weekly* said that Nautilus

⁹ [David Cameron says seabed mining could be worth £40bn to Britain Prime minister says UK can be at head of industry but chooses American defence firm to exploit new Pacific licence](#) *The Guardian* 14 March 2013

¹⁰ Greenpeace 31 July 2013 [Deep seabed mining: an emerging threat to our oceans](#)

¹¹ [Deep Sea Mining- out of our depth](#) *New Internationalist blog* 31 July 2013

Minerals was following best practice and quoted the Nautilus interim president and CEO as saying:

“There’s a lot of stuff put in the press by NGOs and anti-mining bodies with a lot of erroneous facts. Some of it is very poorly done,” he said.

Environmental considerations were of the utmost importance for the company, he stressed. “Solwara 1 is probably one of the most studied pieces of planet’s deep ocean. It’s had something like 36 scientific papers written on it,” he added.¹²

Mining Weekly also quoted a Woods Hole Oceanographic Institute senior scientist Maurice Tivey as saying that the ISA would be a “key player” in constructing a framework for environmental best practice, since it awards exploration and exploitation leases for deep-sea mining in international waters. He said:

“They are adamant about best environmental practices with respect to all kinds of activities and they are backed by various international agreements and binding conventions,” Spicer said. “At the start of 2013, the ISA released a study providing recommendations for exploitation. One of the study’s central platforms related to environmental regulation.”

But Tivey is uncertain how the ISA will successfully monitor compliance and reclamation work. “On land, one can simply visit a site to make sure reclamation is being done. Checking the deep sea sites is another matter entirely,” he said.

Mining Weekly concluded that “binding frameworks for deep-sea mining, environmental best practice and monitoring should be formally codified sooner rather than later”.¹³

Greenpeace is [campaigning for marine reserves](#) to be established. WWF notes that “the oil and mining industries are expected to venture further afield, and eventually explore down to 3,000m, potentially having “devastating effects on fragile, slow growing deep-sea communities”.

WWF South Africa has called for a moratorium on ‘bulk sediment mining’ (which is far less discriminatory than the UK’s proposed “environmentally-responsible” collection of nodules). In a 2012 [position paper on “Bulk deep sea mining”](#) it noted:

Knowledge of ecological relationships in the ocean is more limited than for terrestrial biodiversity. However, there is potential for substantial progress in improving our biogeographic classifications and mapping of patterns of historical human activities in marine and coastal areas through the Environmental Impact Assessment (EIA) and Strategic Environment Assessment (SEA) processes if undertaken adequately.¹⁴

6 Progress through the House

The Bill has been uncontentious and has passed through Second Reading and Committee stages without a division.

¹² Deep-sea mining firms up standards as Nautilus ‘turns corner’ [Mining Weekly](#) 8 August 2013

¹³ Ibid.

¹⁴ WWF Position paper 2012 [Bulk deep sea mining](#)

During Committee Stage important amendments were agreed to that would apply to Bill to Scotland. These followed agreement with the Scottish Government to extend the Bill to Scotland.¹⁵ The Minister for Europe, David Lidington explained:

[...]under the terms of the various devolution Acts, deep-sea mining remains a reserved issue in respect of Wales and Northern Ireland, but it was not explicitly reserved in the Scotland Act 1998. The UK Government have therefore been talking to the Scottish Government about how to bring Scotland within the system that we propose will operate in the UK in respect of deep-sea mining. My right hon. Friend the Foreign Secretary has been in correspondence with John Swinney MSP, the Scottish Cabinet Secretary for Finance, Employment and Sustainable Growth¹⁶

¹⁵ [PBC Deb 15 January 2014 c6](#)

¹⁶ [PBC Deb 15 January 2014 c13](#)