

## 2025 LAW AND POLICY

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Department of the Interior

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### **Re: BOEM Request for Information and Interest — Commercial Leasing for Outer Continental Shelf Minerals Offshore the Commonwealth of the Northern Mariana Islands (RFI)**

#### ***Precis***

*The following comments address the above-referenced notice to assess its conformity with the policies established by Executive Order 14285 as augmented by the directives set out in E.O.s 14215 and 14154. These Orders, together, seek to ensure that all agency actions are consistent with Administration Policy and grounded in currently applicable law. Our conclusion is that, as it currently stands, the proposed competitive leasing system described in the notice these comments address is antithetical to the objectives of E.O.14285 and violative of the principles set out in Orders 14215 and 14154. Similarly, NOAA's proposal for "streamlining" of its regulations for licensing and permitting of mining operations beyond the limits of national jurisdiction, though well focused and intended, falls far short of the President's objectives. Intensive efforts to achieve the President's objectives are clearly warranted, AI systems can play a major beneficial role in keeping agencies committed to efficient achievement of Presidential and Congressional objectives*

#### **Background**

On April 24,2025, the White House published Executive Order 14285 --laying out a well thought out policy framework to "accelerate the responsible development of seabed resources...." Although the United States has long been the leader in development of technologies for exploration and mining of the deep seabed and U.S. companies have registered and proposed development of major claims, progress has been impeded by prior administrations' acquiescence in global efforts to declare the seabed "common heritage" and subject its development to strictures predicated on that philosophy. The Executive Order rejects the "common heritage" principle, recognizes the investments that U.S. companies have made, determines that development is in the national interest and opens the door for reinvigoration of a U.S. generated Deep Seabed Mining industry. It directs cognizant U.S. agencies to do all within their power to "advance United States leadership in seabed mineral development".

#### **Agency Implementation**

Although the cognizant agencies, primarily Interior and NOAA, may be making a good faith effort to implement the Order, it appears that entrenched bureaucratic imperatives, habits and systems are slowing progress towards achievement of the Order's objectives and limiting the Agencies' ability to efficiently achieve the goals the Administration has set for them.

On July 7, 2025, NOAA published, in Regulations.gov, a notice of proposed rulemaking responding to the Executive Order by proposing modest revisions to its rules --allowing combined applications for exploration licenses and mining permits and making other minor updates<sup>1</sup>. Over 23,000 comments, most of which expressed opposition to Deep Seabed mining in

general, were received. The agency is working through these comments to finalize the proposed revisions, and, on October 28, 2025, NOAA sent to the White House a draft of the rules it proposes to publish pursuant to the July 7 notice<sup>2</sup>. In the interim, pursuant to its existing regulations, the Agency is processing applications for exploration and commercial recovery in areas beyond the limits of national jurisdiction of the United States. The issuance of these authorizations will also be processed through Regulations.gov –with similar potential for thousands of comments and resultant delays<sup>3</sup>.

Interior's efforts to implement the E.O. have been more ambitious but less successful. On June 25<sup>th</sup> the Agency announced "new policy steps to speed up the search and development of critical minerals" and promised "decisive moves to secure America's leadership in critical minerals ... by cutting red tape and streamlining the approval process to ensure the responsible development of critical minerals." Unfortunately, this promising start was soon to be derailed by BOEM's effort to apply the competitive leasing model developed over decades of experience with offshore oil and gas--to the process for registering offshore mining claims.

Competitive Leasing is inappropriate for hard mineral mining claims. Any attempt to manage development based on that model will substantially impede the U.S.' development of seabed resources and be directly contrary to the objectives of the President's Order.

Hard mineral mining has never been susceptible to development through competitive leasing. That approach is feasible for oil and gas exploration and development because there is existing information about potential reserves. Companies can make good estimates of a parcel's value, and this drives competitive bids in the oil and gas context. With hard mineral resources, and particularly those which are offshore, both the geology and the prospects for recovery are more complex, making it harder to assess value upfront. Explorers must select the areas to be explored and bear the cost of exploration. Where exploration results in discovery, the location and boundaries must remain secret until development rights are established through simple registration or filing. BOEM's current RFI approach would put on prospective miners the burden of supplying information to characterize and assess the resource but then use that information to support a competitive auction of development rights. That is obviously an uneconomic proposition which will be unlikely to generate interest.

Further, the programmatic environmental review which is a critical element of BOEM's oil and gas leasing program, is incapable of addressing the wide variations in both target minerals and recovery technologies which characterize offshore hard mineral mining. Environmental review will necessarily involve case by case consideration and will take place much later in the development process. In short, extreme challenges will face any effort to develop offshore hard mineral mining through a competitive leasing approach.

The Secretary has authority to authorize mining on a case-by-case basis when he finds it to be in the national interest. We understand that this approach has been used in responding to unsolicited proposals for sand and gravel mining for beach restoration at various locations beyond the limits of national jurisdiction and that the Department is currently negotiating pursuant to an unsolicited proposal for mining of phosphorites off the coast of Virginia. Particularly since President Trump has already determined that offshore mining for hard minerals on the U.S. OCS is in the national interest, this case by case approach would seem to be a superior way, and perhaps the only way, to effectively implement the President's Seabed Mining order.

## Summary and Conclusions

*Mining Specific Issues:* The following comments address the issues directly associated with the Agencies implementation of the Executive Orders and the efficacy of the current proposals in achieving E.O. objectives

1. The process which the cognizant agencies are using to obtain and assess public comments on their proposals to implement E.O. 1425 is impossibly slow and totally ineffectual in providing meaningful input to the agencies adopting the regulation and informing the policy officials overseeing those efforts.
2. As a result, NOAA's proposal, as it currently stands, is far less promising than it might be as a means of promoting the Order's objectives.
3. As it currently stands, BOEM's proposal is likely to impose a practical moratorium on hard mineral mining on the OCS of the U.S. and its territories—a result directly contrary to the E.O.'s objectives.
4. As a further result, whatever development regime is eventually established is likely to be too slow, ineffective and inefficient to challenge the International Seabed Authority or further the objectives of the Executive Order. It would be totally embarrassing to find that the U.S. suffers from the slowness that has long characterized the International Seabed Authority.

*Broader Policy Issues --The Agencies' rulemaking approach both sabotages Administration objectives and creates unacceptable delays--* While we are hopeful that decision makers will see these comments and resolve the specific mining-related issues which they point out, it seems much more important to resolve problems with the rulemaking process which these proceedings so graphically illustrate

Since the NOAA proposal has received over 23, 000 comments and the Northern Marianian RFI 70,000, it seems obvious that AI analytics must play a major role in the Agencies' decision-making in these proceedings. The public needs to know when and how this will work and it needs to be assured that the technology is being used in a proper and transparent manner and that decisions made are properly informed. While the technology to accomplish this seems to be in place and there is adequate legal authority for NOAA and BOEM to use that technology, it is not clear that they are at this point using that authority or that their discussions with OMB and the White House are informed by analytics.

Our informal analysis of comments received in the NOAA proceeding, using commercially available systems, makes clear that the critical issues of security of tenure, rights to develop under existing licenses and protection of rights to explore and mine have all been responsibly raised in the NOAA docket. While we assume that NOAA is conducting a similar analysis, has developed tentative responses and shared those responses with OMB and the White House, we do not know that to be the case. If it is not, we are concerned that the ultimate decision makers may be inadequately informed about the issues they are addressing and that the Administration's objectives may not be achieved.

Similarly, in the BOEM proceeding, we know that the issues of unsuitability of the competitive leasing approach has been raised repeatedly, responsibly and persuasively, but we do not know if responses have been developed or are being shared. Again, there needs to be assurance that the deciders are properly informed.

What we can tell from our experience and our analysis of these two proceedings is that AI can make and must make major contributions to our rulemaking process and our government in general if we are to keep up with the pace of modern innovation and resolve the “slowness” problem that seems to be pushing the world towards autocratic solutions. AI analytics of specific data sets such as public comments on proposed can be magnitudes faster and better informed than traditional analysis. They can engage the public and make it understand that it is being heard. Most importantly, AI can let the Congress and the Executive know whether their policies are being expeditiously and properly carried out. We need to encourage its effective and transparent use in these two proceedings, but also beyond.

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\*2025 Law and Policy is a for profit affiliate of the Blueprint 2025 Initiative—established by Norman Anderson in the early days of Trump 1 with the objective, by 2025, of bringing the U.S. back to its rightful position as the nation with the best, most innovative infrastructure. The undersigned, a co-founder of Blueprint 2025, was also lead counsel to the OMCO consortium in its efforts to secure enactment of DSMRA, to secure exploration licenses thereunder and to settle competing claims in the Clarion-Clipperton zones.

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<sup>1</sup> We are aware that the comment period for these regulations has passed but there is no indication that the review pursuant to E.O.s 14154 and 14215 has been completed. These comments are submitted in order to inform that review.

<sup>2</sup> Since NOAA has reviewed and posted only a small portion of the comments which have been submitted, it is unlikely that suggested changes to make the system more viable have been taken into account. An effective system for timely review and analysis of submitted comments would likely show that a good deal more can be done to fully implement the directives in the E.O.

<sup>3</sup> Again, a method for timely review and analysis of comments submitted would mitigate this potential for delay and, at the same time, better inform the Agency's decisions.