



The Legal Regime for Deep Seabed Mining in the Area

**ISA-Chile Seminar, Santiago
4-5 November 2015**

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International Seabed Authority**

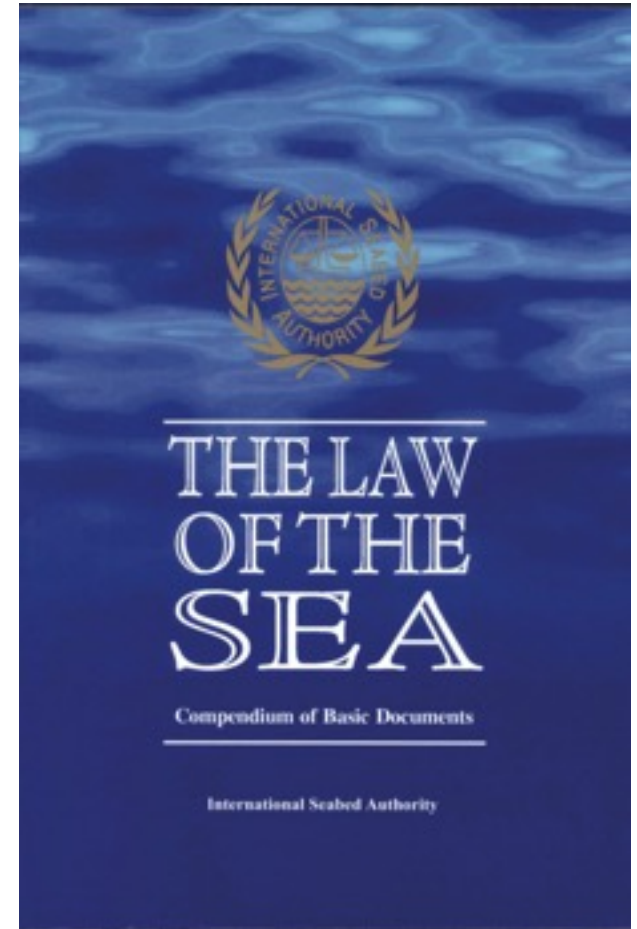
Need to know ...

- Legal context
- What is the Area?
- What are the resources of the Area?
- How is the Area administered?
- Who can exploit the Area and how?
- How are benefits distributed?



Legal context

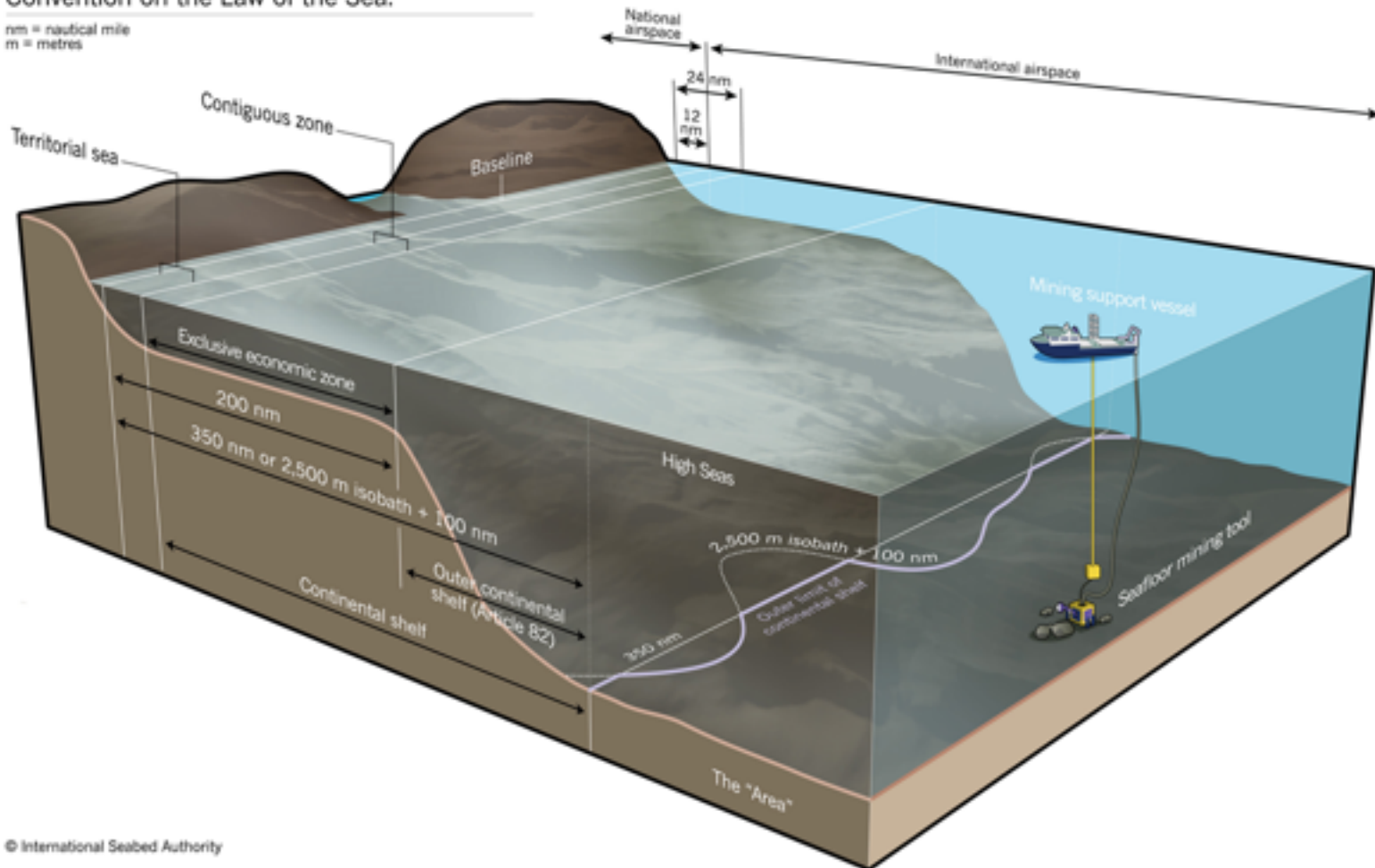
- 1970 Declaration of Principles
- 1982 UN Convention on the Law of the Sea (Part XI)
- 1994 Implementation Agreement
- Rules, regulations and procedures of ISA
- General principles of international law



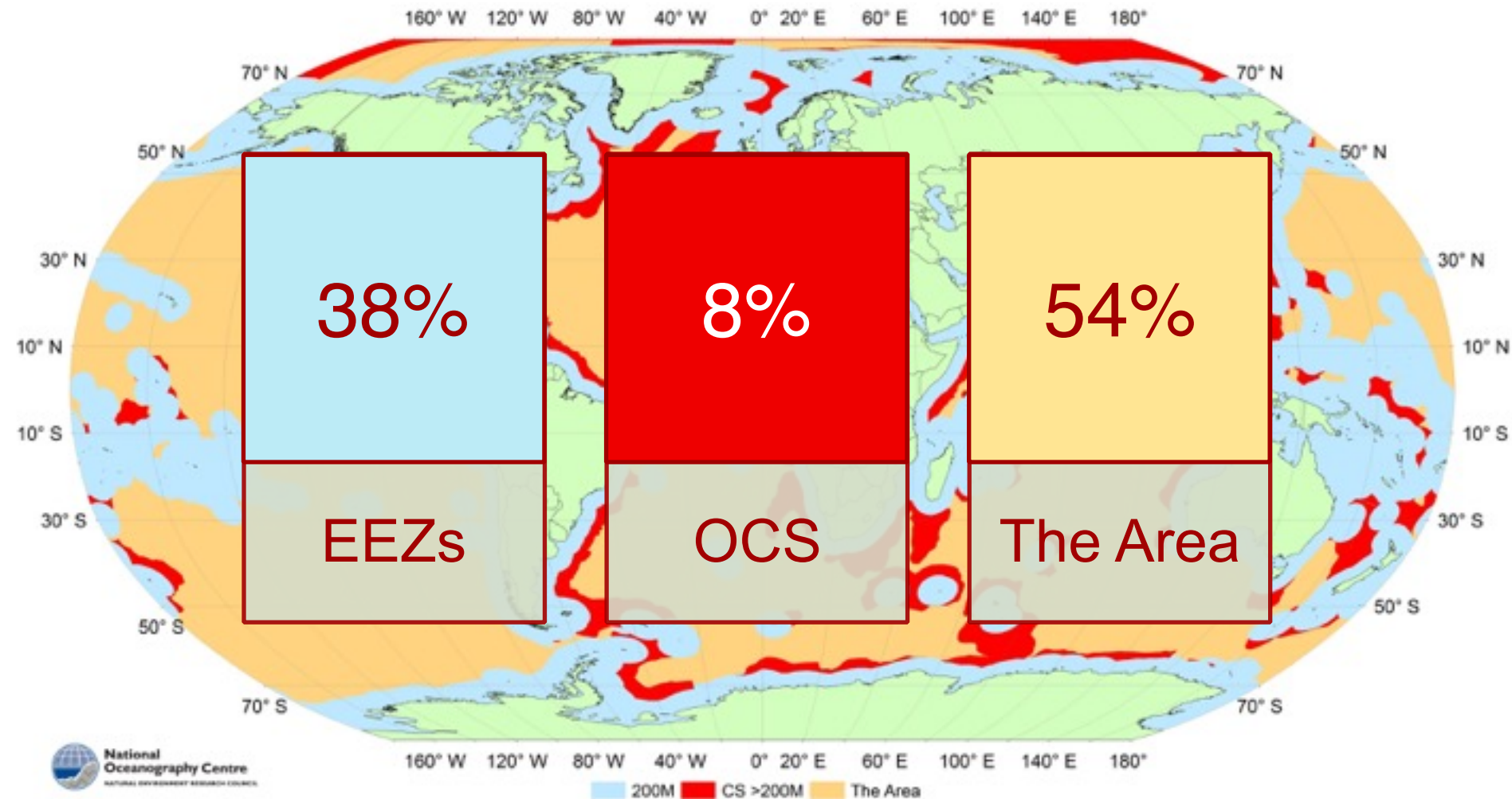
Legal Status of the Area

Maritime space under the 1982 United Nations Convention on the Law of the Sea.

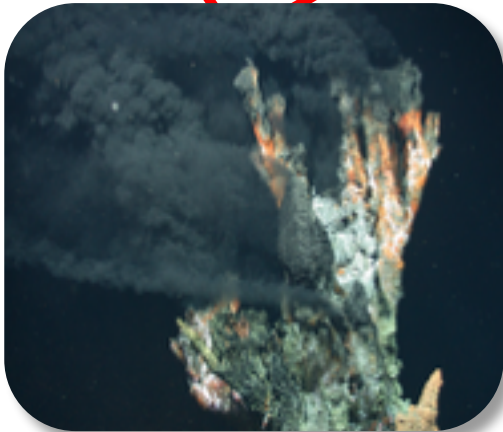
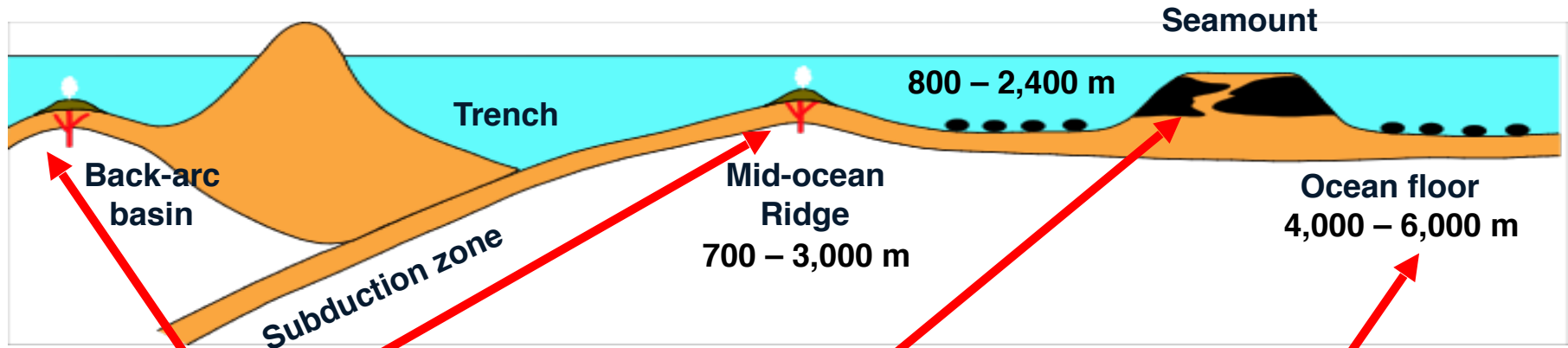
nm = nautical mile
m = metres



Legal Status of the Area



Resources of the Area



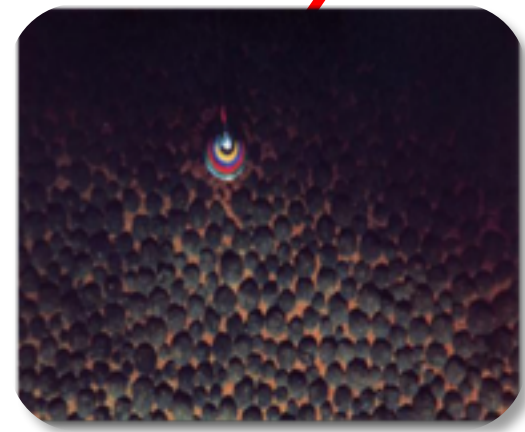
Polymetallic Sulphides

Cu, Pb, Zn, Au, Ag



Cobalt-rich Ferromanganese Crusts

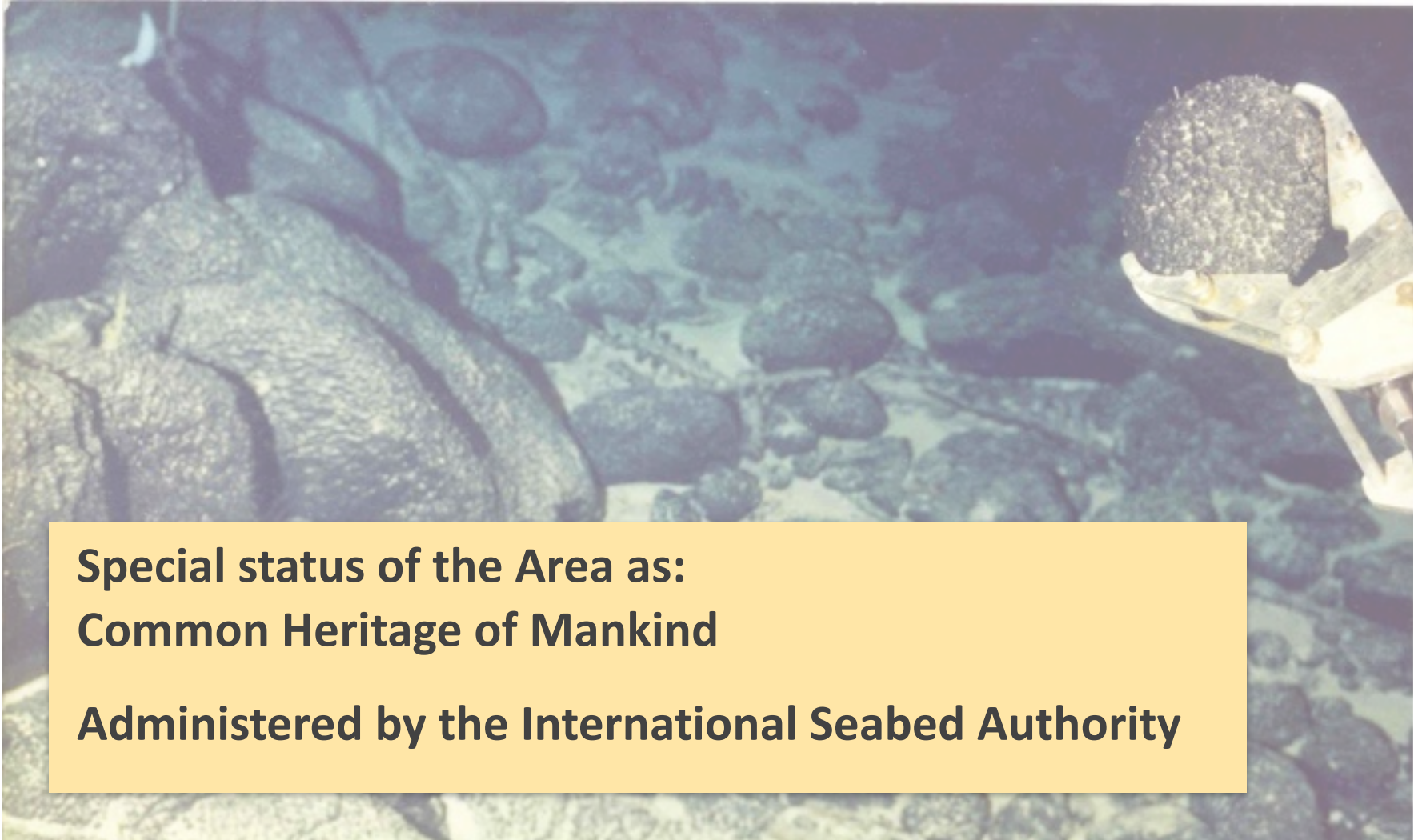
Mn, Ni, Co, Pt, REEs



Polymetallic Nodules

Mn, Cu, Ni, Co, REEs

How is the Area administered?



**Special status of the Area as:
Common Heritage of Mankind**

Administered by the International Seabed Authority

Common Heritage of Mankind

- *No claim to sovereignty over the Area or its resources (Article 137)*
- *All rights in resources vested in mankind as a whole (Article 137)*
- *Mineral rights to be exercised only in accordance with Part XI and 1994 Agreement (Article 137)*
- *Activities in the Area carried out for benefit of mankind (Article 140)*
- *The Area exclusively for peaceful purposes (Article 141)*



Who can exploit the Area ... and how?

**The Enterprise on
behalf of mankind**

**Directly by Qualified
Entities**

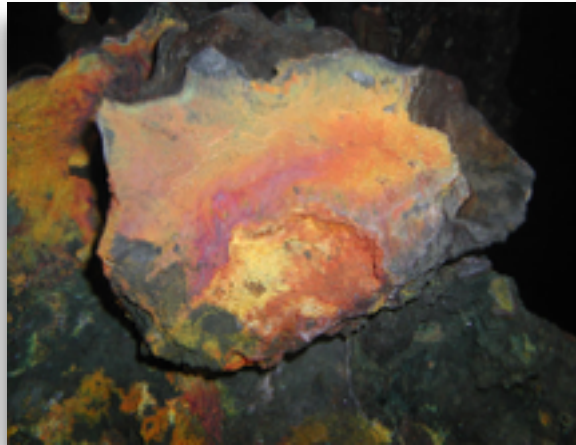
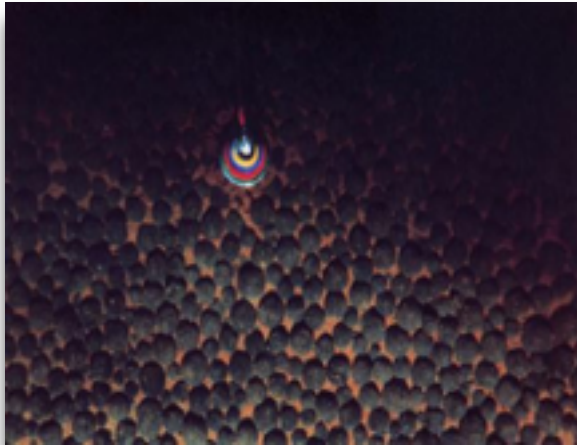
- States Parties
- State enterprises
- Natural or juridical persons sponsored by States Parties

Only under a contract with the International Seabed Authority on behalf of mankind



Regulatory regime

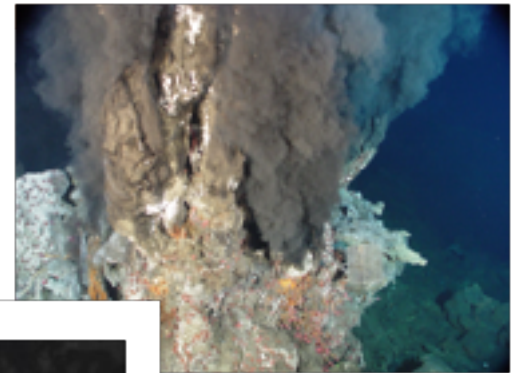
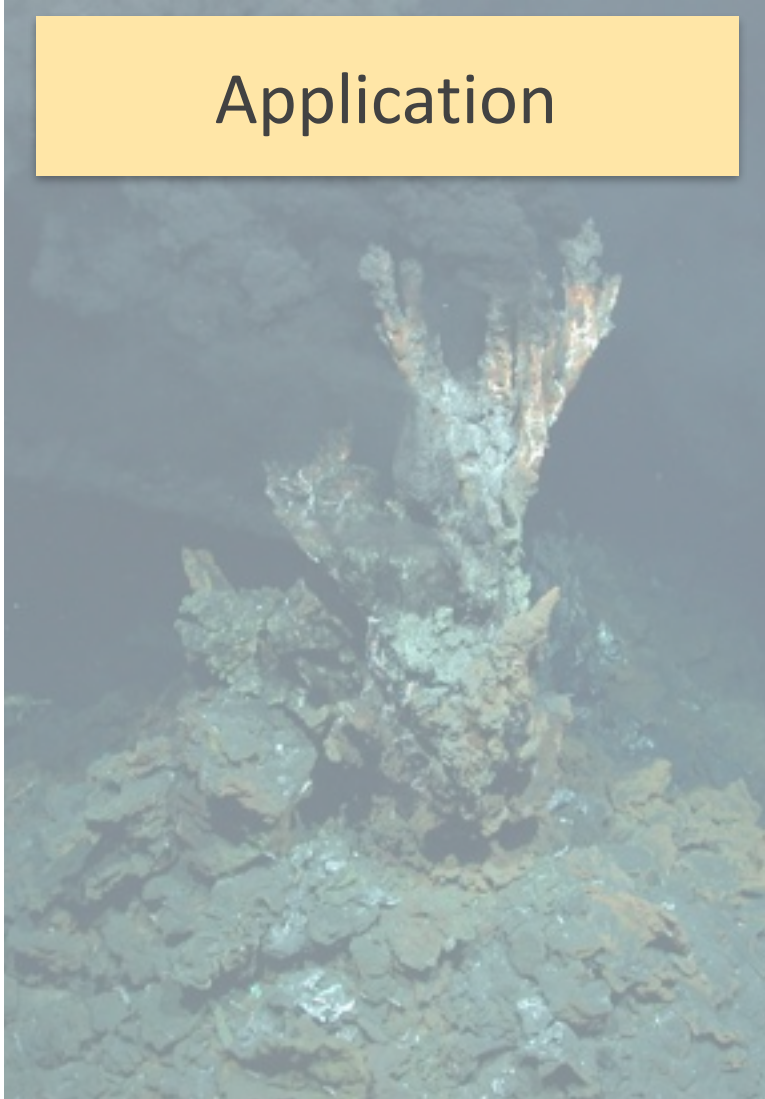
- Regulations cover prospecting and exploration phases only.
- For Polymetallic Nodules, Polymetallic Sulphides and Cobalt-rich Crusts.
- Processes similar, but resource-specific differences.



Regulations for exploitation currently under development

Process ... Exploration

Application



Process ... Exploration

Application

Sponsorship



Advisory Opinion on the Obligations and
Responsibilities of States Sponsoring
Persons and Entities with respect to
Activities in the Area
(ITLOS Case No. 17, 1 February 2011)

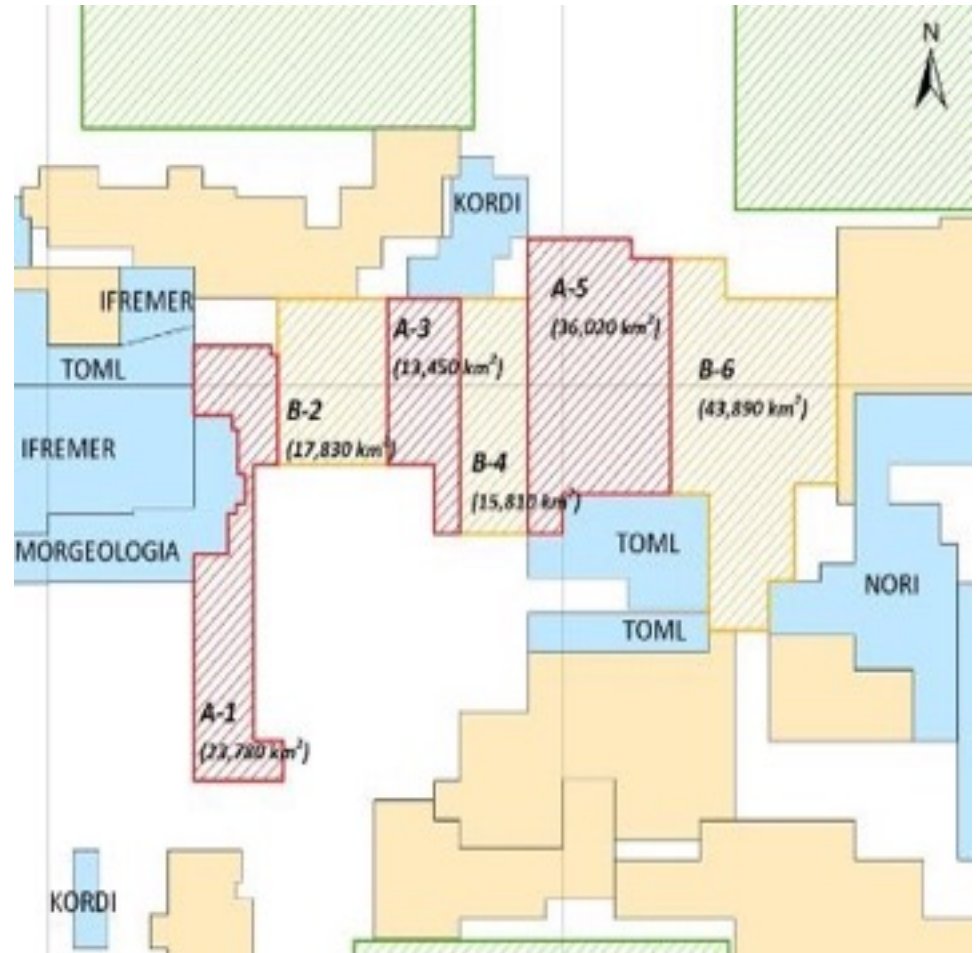


Process ... Exploration

Application

Sponsorship

Size of Area



Process ... Exploration

Application

Sponsorship

Size of Area

Approval process



Council shall approve recommendation by Legal and Technical Commission unless it decides to disapprove by a majority of members present and voting, *including* a simple majority in *each* of the four chambers of the Council (1994 Agreement, Annex, S.3, paras. 11 and 12).



Process ... Exploration

Application

Sponsorship

Size of Area

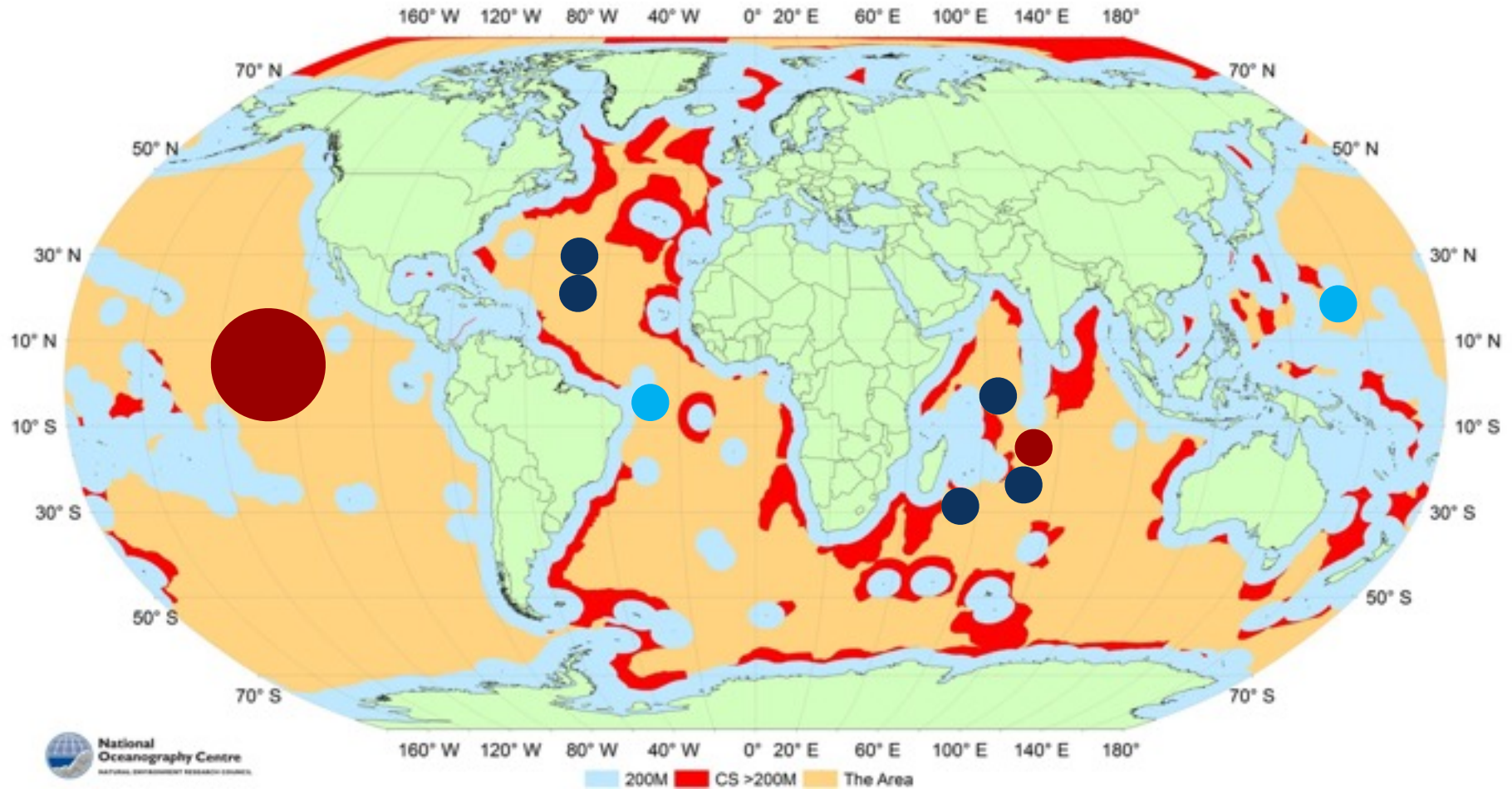
Approval process

Exploration contract



- Standard contract terms
- 15 year duration
- Exclusive rights
- Preference and priority for exploitation
- Annual reporting (including environmental and classification standards)
- Mandatory training

Exploration ... current status



Polymetallic
nodules



Polymetallic
sulphides



Cobalt-rich
crusts



Exploration ... current status

European Union

- IFREMER
- UK Seabed Resources Ltd
- GSR NV (Belgium)
- BGR (Germany)



SIDS

- Ocean Minerals Singapore
- Cook Islands Investment Corporation
- Nauru Ocean Resources Inc
- Tonga Offshore Mining Ltd
- Marawa (Kiribati)



Non-EU

- Yuzhmorgeologiya
- Government of India
- Government of Republic of Korea
- China Minmetals Corporation
- COMRA
- Deep Ocean Resource Development
- JOGMEC
- Russian Federation
- CPRM (Brazil)
- Interoceanmetal Joint Organization



**27 Exploration
contracts**



The Enterprise

- Article 170 and Annex IV
- Radically affected by 1994 Agreement.

Applicant (developed State) MUST contribute EITHER (a) reserved area or (b) an equity interest in a joint venture with the Enterprise.



The Enterprise

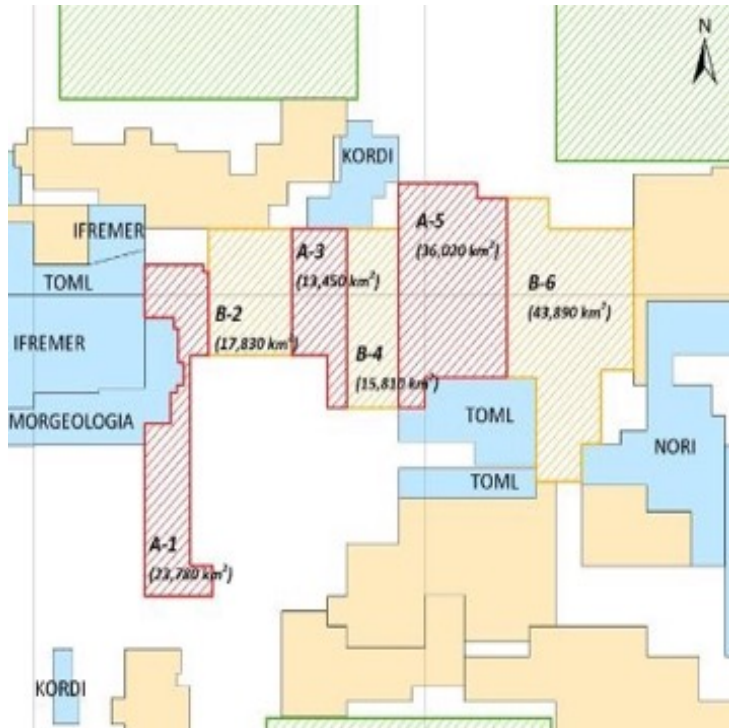
Applicant (developed State) MUST contribute EITHER (a) reserved area or (b) an equity interest in a joint venture with the Enterprise.

Joint Venture with the Enterprise to take effect only on entry into force of future exploitation contract.

- **Minimum 20% equity in JV to the Enterprise on the following terms:**
 - **10% at no cost;**
 - **Balance to be purchased at cost, except that Enterprise receives no profit on such equity until applicant has recovered its equity in JV.**
- **Option for Enterprise to purchase a further 30% equity in JV.**
- **Terms and conditions to be developed.**

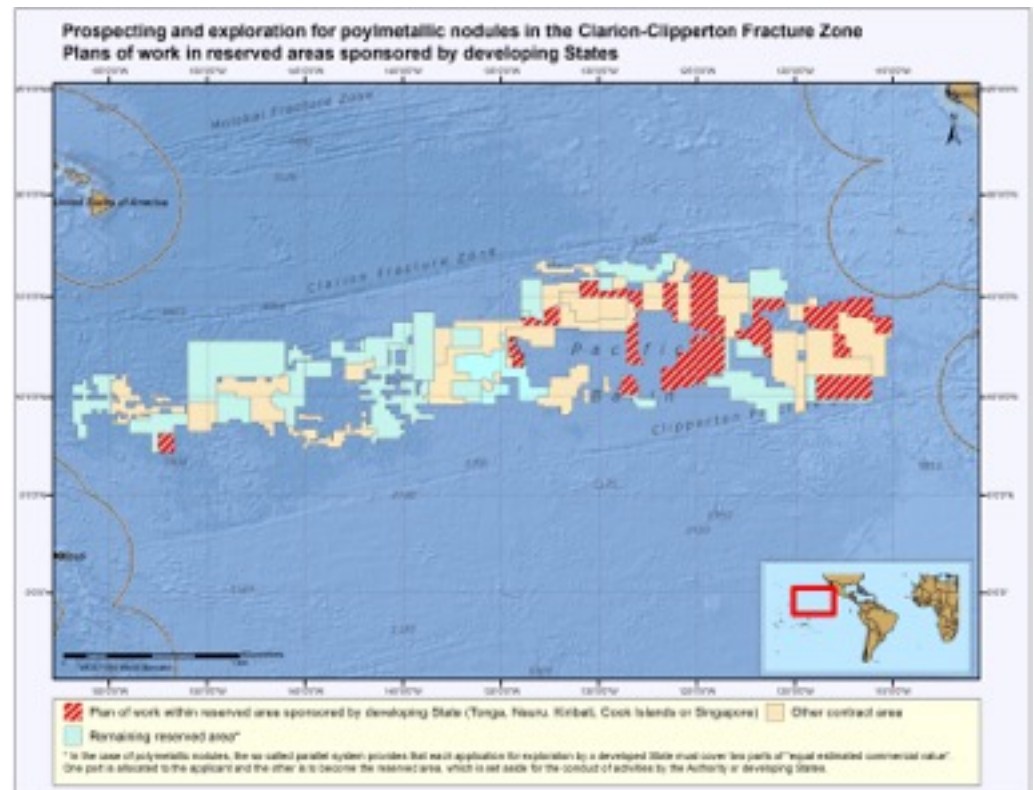


Reserved areas



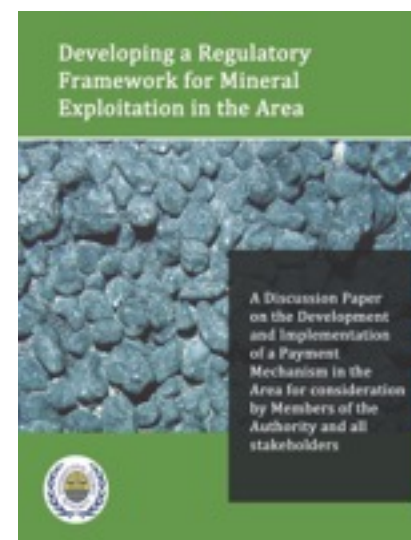
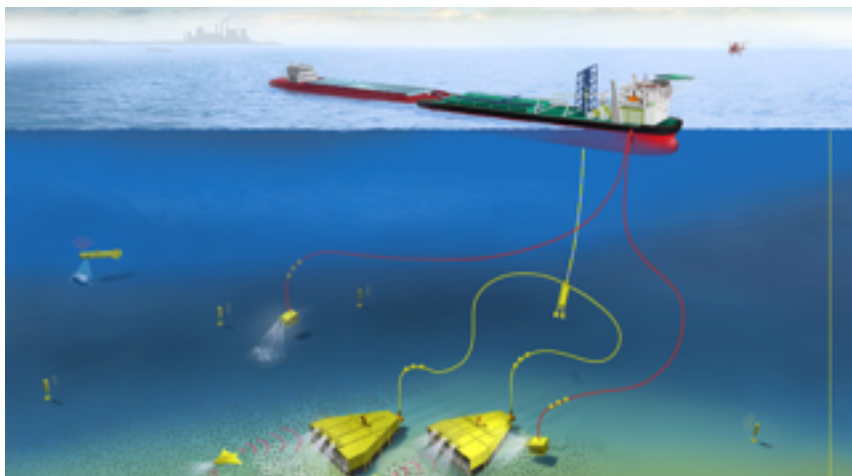
Available for the Enterprise or developing States or entities sponsored by developing States

Two areas of equal estimated commercial value



Exploitation ...

- Initial stakeholder consultation 2014 to 2015
- Framework issued by Legal and Technical Commission in July 2015
- List of 'high level issues' identified
- 'Zero Draft' to be prepared by early 2016
- Financial model

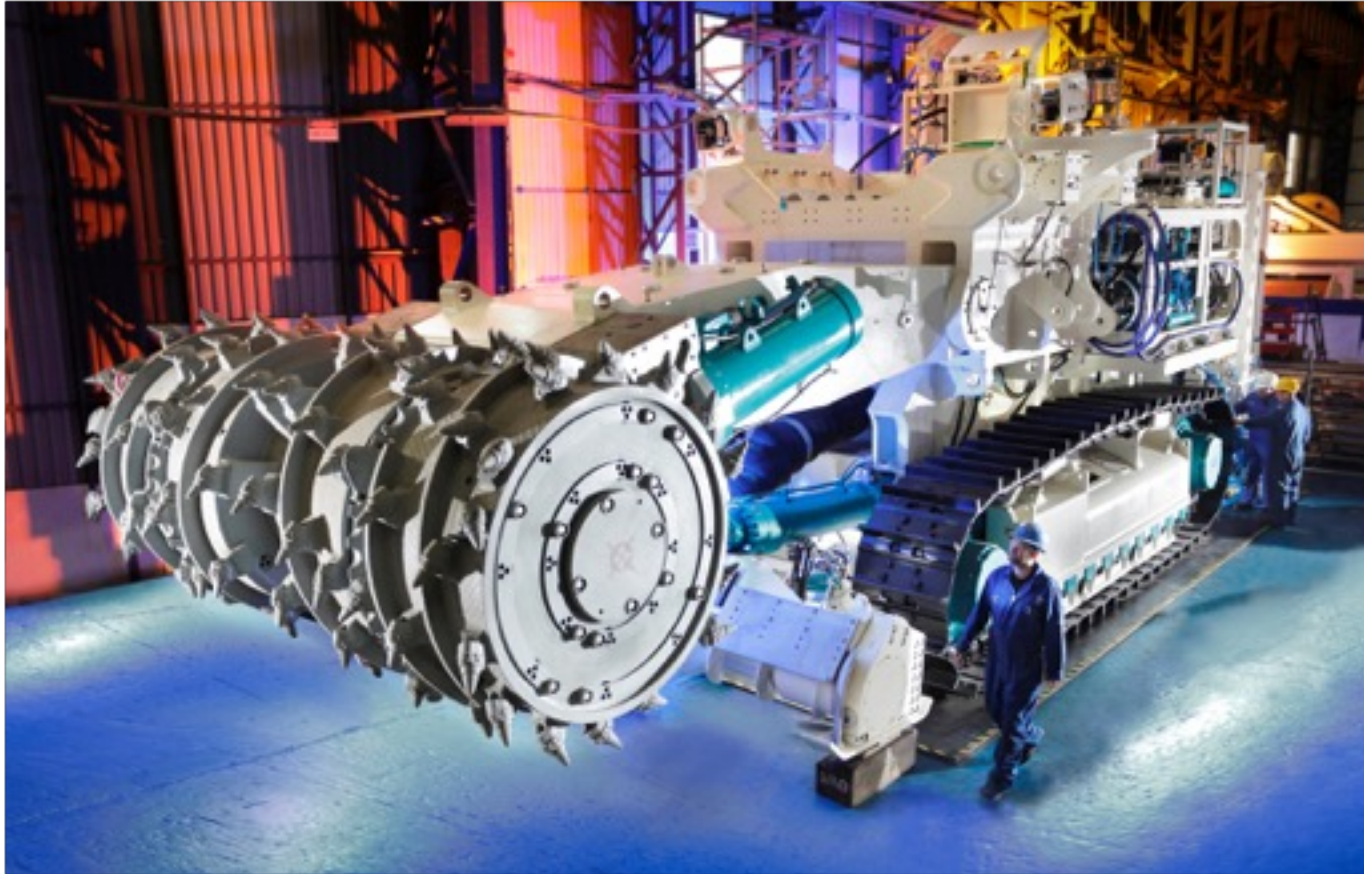


Environmental regulations



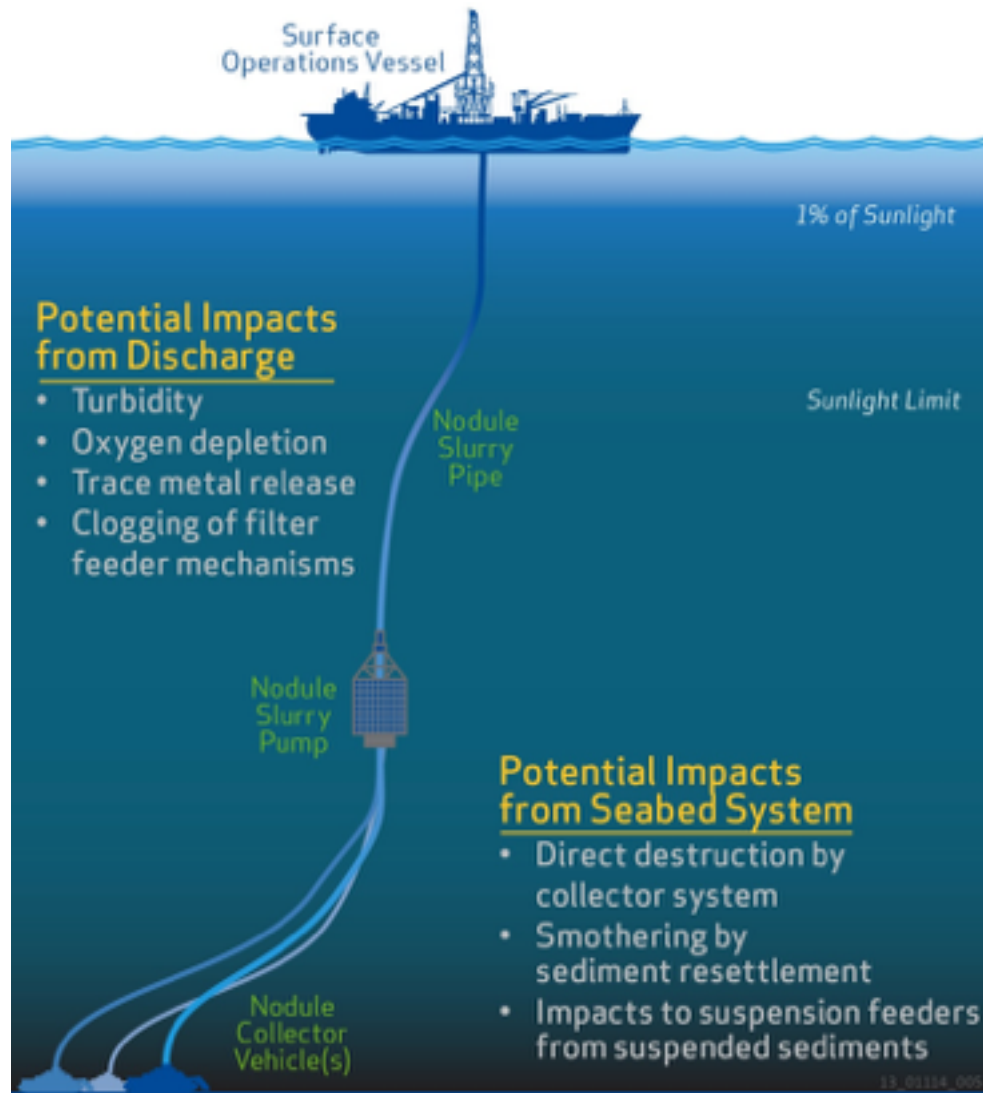
- Environmental studies
- Gather baseline data and report to ISA (guidance by ISA)
- Monitor impacts on marine environment
- Avoid Vulnerable Marine Ecosystems (VMEs)
- EIA for test mining
- Maintain contingency plan

Environmental regulations



Exploration is not mining!

Environmental regulations



Responsibilities for ISA, contractors and States

- Article 145, ISA to regulate to prevent damage to flora and fauna of marine environment
- Article 192, General responsibility of all States for marine environment
- Advisory Opinion, responsibility of sponsoring States
- Prior EIA required, but what is process?
- Monitoring programmes and inspection by ISA
- Site-specific PRZ and IRZ



Benefit-sharing



Activities in the Area shall be carried out for the benefit of mankind as a whole

Requires ISA to develop equitable sharing criteria, taking into account:

- coastal and landlocked States
- interests and needs of developing States
- and peoples who have not attained independence or self-governing status

