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Deep Seabed Mineral Resources Act

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DEEP SEABED MINERAL RESOURCES ACT

INTERNATIONAL LAW: OCEAN MINING

Senate Bill 493 will allow U.S. mining interests to begin commercial recovery of hard minerals from the ocean floor interim to an international treaty.

Senate Bill 493, the Deep Seabed Mineral Resources Act, was unanimously approved by the Senate Energy Committee on May 1, 1979.[1] The act's purpose would be "to promote the orderly development of hard mineral resources in the deep seabed, pending adoption of an international regime relating thereto, and for other purposes."[2] The act would permit U.S. mining interests to begin commercial recovery of hard minerals from the ocean floor. Exploitation of natural resources from the deep seabed, defined in the bill as "the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside the continental Shelf of any nation,"[3] is also regulated.

The mining industry has already spent millions of dollars on undersea exploration and technology for recovery of the mineral nodules,[4] which contain high concentrations of valuable manganese, copper, nickel and cobalt.[5] United States miners are urging Congress to protect their extensive investments while encouraging a successful

1. 10 ENVIR. REP. (BNA) 46 (1979).

2. S. REP. NO. 96-307, 96th Cong., 1st Sess. Preamble (1979). This report is the amended version of S. 493 after revision by the Committee on Energy and Natural Resources, the Committee on Commerce, Science & Transportation and the Committee on Foreign Relations.

3. *Id.* §4(4). "Deep seabed" is defined in terms of the Continental Shelf which is defined in §4(2)(A) of the act as "the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of two hundred meters or, beyond that limit, to where the depth of the super adjacent waters admits of the exploitation of the natural resources of such submarine area." This is the same definition used in the Convention on the Continental Shelf of April 29, 1958 which entered into force for the United States on June 10, 1964. This international agreement gives all coastal states sovereign rights to explore and exploit their continental shelf for its natural resources, without interference from another country.

4. 37 CONG. Q. WEEKLY REP. 773-74 (April 28, 1979).

5. S. REP. NO. 96-307, *supra* note 2, §4(6) defines the valuable "hard mineral resource" as the multi-mineraled, fist-sized nodules which are found in great abundance on the deep seabed.

international law of the sea treaty. The United States currently imports billions of dollars worth of the minerals, mostly from politically unstable, developing nations. This is a large percentage of America's total supply and the resulting dependence adversely affects national economic security. Seabed minerals could be substituted for these "undependable and costly foreign supplies."[6]

BACKGROUND

This act is a controversial push for domestic legislation to regulate United States mining operations in an international zone. General principles of international law recognize that the deep seabed, and the high seas, are open to all nations and that the freedoms of the high seas, as stated in Art. 2 of the Convention on the High Seas of April 29, 1958[7] "shall be exercised by all States with reasonable regard to the interests of other States." The United States agreed to a 1970 United Nations resolution which declared seabed resources were the "common heritage of mankind."[8] This article will briefly review both the domestic regulatory scheme, and the international interests involved.

Senate Bill 493 was referred to five Senate committees because of its environmental, international and tax implications. At this writing, the Committee on Finance and the Committee on Environment and Public Works are scrutinizing the bill. Although similar deep seabed mining bills failed the four previous Congresses, it is expected that the bill will pass the first session of the 96th Congress despite its controversy.[9]

LICENSING

Under the proposed act, the Administrator of the National Oceanic and Atmospheric Administration (NOAA) will regulate the mining activities and issue licenses to engage in exploration for the hard mineral resources. He would also issue permits for the commercial recovery of the mineral nodules.[10] Each applicant must first

6. 37 CONG. Q. WEEKLY REP. 773-74 (April 28, 1979).

7. CONVENTION ON THE HIGH SEAS of April 29, 1958, 13 U.S.T. 2312, 450 U.N.T.S. 82 (1958).

8. United States General Assembly Resolution 2749 (xxv) (1970), *reprinted in* S. REP. NO. 96-307, *supra* note 2, § 2(a)(2).

9. *Supra* note 5.

10. S. REP. NO. 96-307, 96th Cong., 1st Sess. § 102(a) (1979). Originally, under S. 493, the Secretary of the Interior was authorized to issue licenses and permits. This was amended in S. REP. NO. 96-307 granting authority to regulate mining activities pursuant to this act to the Administrator of the NOAA.

prove to be financially responsible, have the necessary technical capability, and submit a work plan that meets the bill's requirements for environmental safeguards[11] before the Administrator can certify issuance of a license or a permit. The Administrator also is required to determine whether the proposed exploration or commercial recovery will (1) unreasonably interfere with the freedoms of the high seas of other states, (2) conflict with any international obligations of the United States, (3) breach international peace and security, (4) have a significantly adverse effect on the quality of the environment or (5) pose an inordinate threat to the safety of life and property at sea.[12] A valid license then entitles the holder to a permit, which allows him to "recover, own, take away, use and sell the hard mineral resources."[13] The Administrator may modify or revise the terms of the permit to prevent any of the above and, after notice, may deny issuance, suspend, or revoke any license or permit if the holder fails to meet the requirements of the proposed act.[14]

REGULATION

Provisions of the act would be enforced by the Administrator.[15] Licensees and permittees would have to allow federal officials on board ship to monitor exploratory and commercial recovery operations to assure stated goals were met.[16] Authorized enforcement officers, under the control and supervision of the U.S. Coast Guard, could board, inspect and search a vessel if there were reasonable cause to believe a violation had been committed.[17] The officers could seize the vessel with everything on board, including any recovered mineral resources, and arrest the persons involved.[18] United States district courts would have exclusive jurisdiction over cases or controversies arising under the act[19] and could adjudicate a civil forfeiture proceeding of any property seized.[20] The other major civil penalty would be a maximum $25,000 fine for each violation.[21]

11. S. REP. NO. 96-307, *supra* note 2, §103(c)(1)-(3).
12. *Id.* §105(a)(1)-(5).
13. *Id.* §102(b)(3).
14. *Id.* §106(a).
15. *Id.* §304(a).
16. *Id.* §114.
17. *Id.* §304(b)(1)-(2).
18. *Id.* §304(b)(3)-(5).
19. *Id.* §307.
20. *Id.* §306(b).
21. *Id.* §302(a). Also, each day of a continuing violation will be considered a separate offense, subject to a fine.

Criminal penalties are also included in the bill for willful and knowing violations of the act.[22]

The act would also impose a tax of .75 percent on mining revenues.[23] A Deep Seabed Fund would be established in the United States Treasury with funds matching those collected for mining. This fund will be available for purposes decided by Congress, which may include paying any financial obligations assumed by the United States pursuant to a ratified law of the sea deep seabed treaty.[24]

ENVIRONMENTAL ASPECTS

The act would regulate miners' effects on the environment by specifically requiring an Environmental Impact Statement (EIS) prior to issuance of a license or permit.[25] There would be terms within each license or permit to limit the conduct of the holder concerning exploration or commercial recovery,[26] thereby promoting safety of life and property at sea. The use of the best available technology for protection of safety, health and environment would be required.[27] Included in the act are terms regarding the prevention of waste and providing for the future recovery of any remaining mineral nodules.[28]

INTERNATIONAL ASPECTS

The other prominent aspect of this act would be language that protects and enhances United States' interests without disrupting delicate international negotiations concerning use of the deep seabed. The act specifically would disclaim any extraterritorial sovereignty.[29] Title II provides that the act would be transitional, pending the adoption of an international agreement at the Third United Nations Conference on the Law of the Sea (UNCLOS III), or the

22. *Id.* §303(a).

23. *Id.* §502(a) amends Chapter 36 of the Internal Revenue Service Code of 1954 by adding Subchapter F—Tax on Removal of Hard Mineral Resources from Deep Seabed. Sec. 4495(b) of the new subchapter states the amount of tax to be imposed on the removal of a hard mineral resource from the deep seabed shall be 3.75% of the imputed value of the resource removed. Sec. 4497(a) then defines "imputed value" as 20% of the fair market value of the commercially recoverable metals and minerals contained in the resource.

24. S. REP. NO. 96-307, *supra* note 2, §503.

25. *Id.* §109(d). The issuance of a license or permit is "deemed to be a major Federal action significantly affecting the quality of the human environment for purposes of section 102 of the National Environmental Policy Act of 1969."

26. *Id.* §109(b).

27. *Id.*

28. *Id.* §110.

29. *Id.* §3.

negotiation of a multilateral or other treaty concerning the deep seabed. If any international agreements were accepted, non-conflicting provisions of this act would remain in effect. The bill directs U.S. delegates to negotiate a treaty that does not unreasonably impair the value of U.S. investments in the seabed.

In further consideration of international comity, the Secretary of the Interior with the Secretary of State could designate a foreign nation as a "reciprocating state," if the nation meets standards compatible with the act. A foreign nation would then have to regulate the exploration and commercial recovery activities of its citizens, recognize and respect United States licenses and permits, and provide an interim framework for exploration that does not interfere unreasonably with the interests of other states exercising their freedoms of the high seas.[30] The Administrator is directed to consult with foreign nations preparing to enact similar domestic legislation, to facilitate the designation of a reciprocating state.[31] Exploration or recovery by U.S. citizens which conflicts with an equivalent authority by a designated reciprocating state would be prohibited.[32] The reciprocating state designation would be revoked if that nation no longer complied with the requirements set out in the bill.[33]

There is concern that this domestic legislation would threaten the long-negotiated, complex Law of the Sea treaty. Establishment of a regime for deep seabed mining has become the primary obstacle to a successful conclusion of UNCLOS III. Unilateral action on the part of the United States to encourage seabed mining could stall action on a final law of the sea agreement by antagonizing developing nations involved in UNCLOS III, since these countries insist the "common heritage" principle entitles them to a share of the seabed minerals.[34] But U.S. negotiators maintain that traditional high seas freedoms would be in force until the conference could agree on a treaty, and these freedoms include seabed mining.[35] Congressman John M. Murphy (D.–N.Y.), sponsor of a similar bill that failed in 1978, feels that such "domestic legislation, at this time, is not incompatible with an international agreement and may actually 'spur' such an agreement."[36]

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30. *Id.* §117(a)(1)-(2).
31. *Id.* §117(f).
32. *Id.* §117(b).
33. *Id.* §117(d).
34. Murphy, *The Politics of Manganese Nodules: International Considerations and Domestic Legislation,* 16 SAN DIEGO L. REV. 532-33 (1979).
35. *Supra* note 5.
36. Murphy, *supra* note 34, at 533. Congressman Murphy, a leading spokesman for unilateral action by the U.S., sponsored H.R. 3350, 95th Cong., 2d Sess. (1978) entitled the

CONCLUSION

U.S. mining companies have invested heavily in developing the technology for discovering and commercially mining the valuable mineral nodules on the seabed under international high seas. If passed, Senate Bill 493 would allow these companies to proceed with ocean bed mining, subject to regulation by the NOAA, until any multilateral or law of the sea treaty concerning seabed mining is agreed upon. To be licensed to recover seabed minerals, miners must meet the requirements of this act concerning (1) financial and technical ability, (2) environmental and resource conservation and protection, and (3) conditions for the safety and health of life and property at sea. The requirement of an EIS, however, will slow the beginning of mining activity by U.S. companies, perhaps until an international treaty has been approved.

This act demonstrates the United States' dual commitment to a new and comprehensive international law of the sea treaty and to a national interim regulatory framework for the fast-paced development of necessary deep seabed mining. The act indicates that it is possible "to devise domestic legislation that will permit ocean mining operations to commence and that, at the same time, will not prejudice the formation of a new international regime."[37]

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Deep Seabed Hard Mineral Resources Act. The bill died in the last days of the session when blocked by former Sen. James Abourezek (D-S.D.) who felt the U.S. should not take such action prior to a treaty.

37. Murphy, *supra* note 34, at 548.