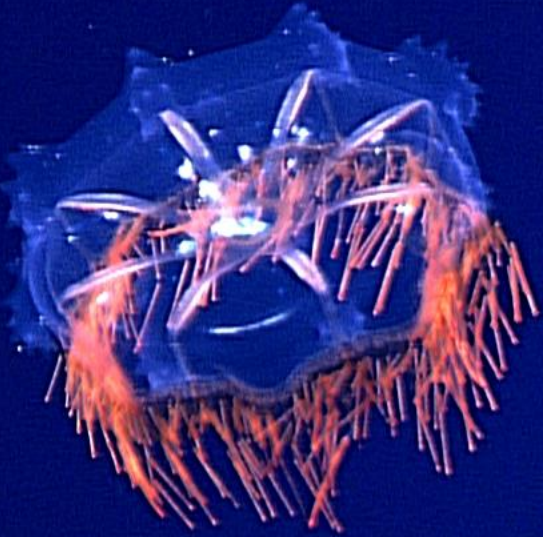


Benefit Sharing of Revenue from Test Mining

Legal Perspective: presented by Hannah Lily

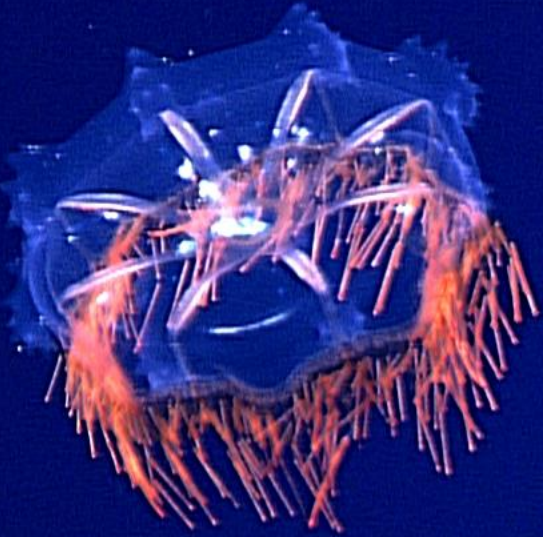


Test-Mining Workshop
Bremen, Germany - 17 December 2024



Proposed text – DR48 TER

(6) Any gains from Mineral resources which have been collected during Test Mining shall be paid to the Environmental Compensation Fund, as established by Regulation 54. [To this and prior to the commencement of Commercial Production, a Contractor shall provide the Secretary-General with a Test Mining royalties report containing the information specified in the applicable Standards and Guidelines in respect of any minerals collected during Test Mining. Royalties in respect of mineral resources that have been collected during Test Mining shall be paid at the time the Contractor makes its first payment or royalties after the date it commences Commercial Production.]



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What does 'gains' mean?

- Implies profits, or realisation of economic benefits, by contractor?
- But royalty is expected to be paid by a contractor based on the value of the metals extracted, not contingent on sale or profit by the contractor.
- Second part of (6) refers to royalties.

Proposed text – DR48 TER

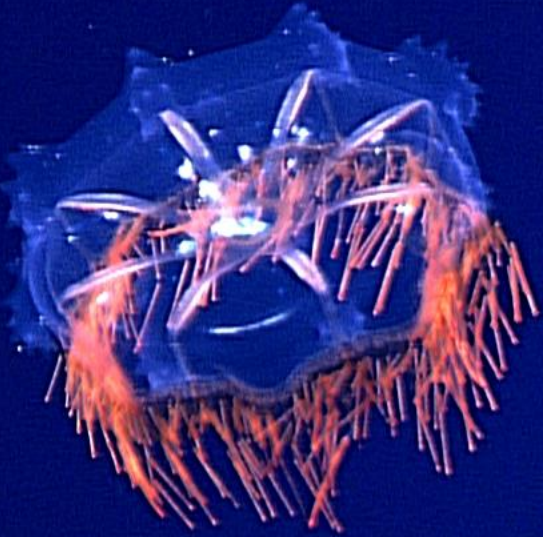
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Proposed text – DR48 TER

(6) Any **gains** from Mineral resources which have been collected shall be paid to the Fund established, as established, for the benefit of the Commonwealth of the Northern Mariana Islands. [The Contractor shall pay a royalty on the value of the mineral resources extracted during TM. Remove word 'gains'.] Amend the first sentence so that it requires a royalty to be paid on the mineral resources extracted during TM. Remove word 'gains'.



Proposed text – DR48 TER

(6) Any gains from Mineral resources which have been collected during Test Mining shall be paid to the **Environmental Compensation Fund**, as established by Regulation 54. [To this and prior to the commencement of Commercial Production, a Contractor shall provide the Secretary-General with a Test Mining royalties report containing the information specified in the applicable Standards and Guidelines in respect of any minerals collected during Test Mining. Royalties in respect of mineral resources that have been collected during Test Mining shall be paid at the time the Contractor makes its first payment or royalties after the date it commences Commercial Production.]

Why the ECF?

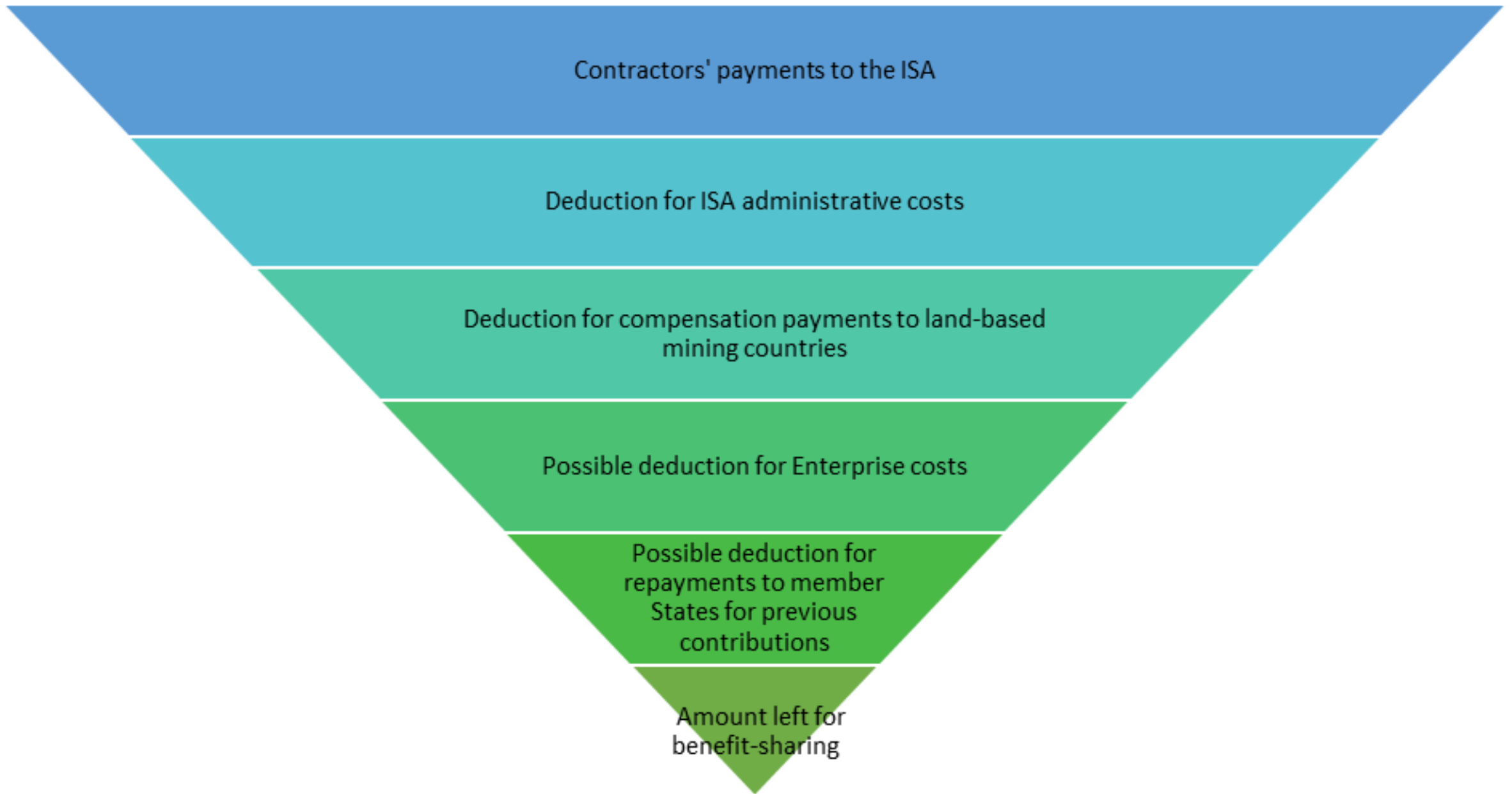
UNCLOS (Articles 136 and 141):

- Resources of the Area are the CHM.
- Activities in the Area shall be carried out for the benefit of humankind.
- ISA shall provide for equitable sharing of financial and other economic benefits derived from activities in the Area.

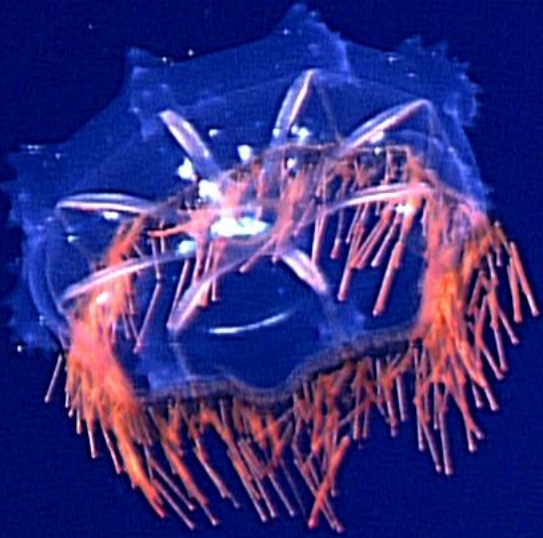
Cf. ECF's purpose is to cover compensation for damage caused by a contractor (where it cannot be recovered directly from the contractor or the sponsoring State).

Proposed text – DR48 TER

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D. Wilde, H. Lily, N. Craik, A. Chakraborty, "Equitable sharing of deep-sea mining benefits: More questions than answers" (2023) Marine Policy, <https://doi.org/10.1016/j.marpol.2023.105572>.



Proposed text – DR48 TER

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(1) What happens to the minerals if the Contractor who extracted them during TM does not progress to Commercial Production?

(2) Is there a risk this arrangement incentivises large-scale mineral extraction under TM, and/or puts pressure on the ISA to approve an exploitation contract in order to monetise minerals previously extracted?

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Proposed text – DR48 TER

(6) Any gains from Mineral resources which have been collected shall be paid to the Fund established, as established in the Annex to the Convention, for the benefit of the Contracting Parties to the Convention. The Contractor shall return to the custody of the ISA all Mineral resources which have been collected during TM, and shall ensure that the Contractor makes its return to the date it commences Commercial Production.]

Possible Answer:

The issue could be addressed by

- (i) ISA imposing a limit on the volume of minerals extracted during TM, tied to the specific purposes of the TM; and
- (ii) the minerals returning to the custody of the ISA in the event of no future contract.



ANOTHER QUESTION:

If minerals are extracted during Test Mining, who has legal ownership of them?



UNCLOS:

Title to minerals shall pass upon recovery in accordance with this Convention [Annex III, article 1]

These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and the rules, regulations and procedures of the Authority [Article 137(2)].

Draft Exploitation Regulations, November 2024:

Section 5

Legal title to Minerals

5.1 The Contractor will obtain title to and property over the Minerals upon recovery of the Minerals from the seabed and ocean floor and subsoil thereof; [onto the Contractor's mining vessel or Installation ~~and receipt by the Authority of the required payment for those Minerals~~], in compliance with this Contract.

5.2 This Contract shall not create, nor be deemed to confer, any interest or right on the Contractor in or over any other part of the Area and its Resources other than those rights expressly granted in this Contract.

Exploration Regulations: silent.

But 'recovery' of minerals not permitted, within the definition of 'Exploration'. So TM arguably not 'recovery'?



WHY DOES IT MATTER

Who owns minerals collected under TM?

Contractor?

- Is it fair to demand return (if no commercial production)?
- Can ISA retroactively require royalty?
- Paperwork so that the contractor can sell minerals?

ISA / humankind?

- What rules are in place for how the contractor can use the minerals?
- Is it fair that contractor is storing the minerals at their cost?
- Why would the ISA sell minerals it owns 100%, for 4-6% of their value?!

THANK YOU

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